

The effect of the true multiple of offences in the penalty: (comparative study)

Sagad Thamer Kazem Al-Khafaji
Al-Mustaqbal University
College/Iraq

Abstract

The true multiple of crimes is that the offender himself commits two or more crimes, whether of a single type or of different types, whether they're all committed simultaneously or at different times and before the offender is sentenced to a final judgment for one of these offences. There is no doubt that when the offender commits an offence, he shall be punishable by the penalty prescribed for this offence. But in some cases, the offender commits more than one crime not separated by a sentence, this shows the criminal gravity of him. Hence, the offender must be punished with the penalty prescribed for each of the offences he has committed in accordance with the rule of multiple penalties for multiple offences. These offences are not required to be committed simultaneously but may be committed at different times, but sometimes the legislations limit this by placing some restrictions and exceptions to this rule, this because the offender sometimes commits several related crimes with a common object; in this case, the offender will not punish for all the penalties prescribed for all these crimes, but only for one penalty. This what was adopted by most of legislations that regulate the provisions of true multiple offences as well as many restrictions to the rule of multiple penalties, these restrictions such as that penalties may not be increased, in the case of their multiple, from a certain limit and the integration of the penalties. The effect of the true multiple of offences in the penalty

Keywords: The true multiple, the offence, the penalty, the restrictions, legislations

To cite this article: Sagad Thamer Kazem Al-Khafaji. (2021) The effect of the true multiple of offences in the penalty: (comparative study). *Review of International Geographical Education (RIGEO)*, 11(8), 2374-2379. doi: 10.48047/rigeo.11.08.220

Submitted: 09-10-2020 • **Revised:** 11-12-2020 • **Accepted:** 13-02-2021

Introduction

Penal legislation defines/determine, in the world, a specific penalty for each offence, the offence which is based on what the legislator deems compatible with the gravity and gravity of the act committed by the offender, this with a view to achieve the public and private deterrence and achieve the justice, so that when the offender commits the crime of theft, he shall be punished by the prescribed penalty of this offense; and who commits the offense of homicide, he also shall be punished by the prescribed penalty of this offense.

The problem/issue of research

It is to ask this question "Is an offender who commits more than one offence, shall be punished by all penalties prescribed for each crime? Or the penalty is limited to the most serious offence"? For that, we will divide this research into two sections/themes. In the first one, we will clarify the concept of the true multiple of offences, while in the second, we will touch upon the effect of the true multiple of offences in the penalty.

The concept of the true multiple of offences

In this research, we clarify the concept of the true multiple of offences, in addition to its own conditions, and this will be into two requirements:

The definition of the true multiple of offences

Most penal legislations did not state the term of the true multiple explicitly, but they just stated the term on the (multiple of offences) as the Iraqi, Egyptian, the Emirates and French legislators. But there are some legislations which pointed out this term explicitly such as the ([Lebanese Penal Code No. 340 of 1943](#)) of the ([Lebanese Penal Code No. 340 of 1943](#)). And then, most penal legislations, whether arab or foreign do not know the concept of the true multiple of offences while they addressed its provisions such as the ([111, 1969](#)) of the ([111, 1969](#)), likewise for the ([Egyptian Penal Code No. 58 of 1937](#)) and the [Emirati legislator in the articles \(88-93\)](#), the same thing for the French legislator in the articles(132-2) to (132-7) of the ([Code, 1992](#)), which become in force in 1994. It is worth mentioning that the concept of the true multiple of offences was defined jurisprudentially by several definitions, such as: the offender committed several independent material acts, every act is considered as an autonomous offence, whether these crimes are all of one kind, for example as if they are all crimes of theft, or offences of different kinds as committing offences of murders, beatings, theft and fraud([Hussein, Al-Khalaf, & Alshawi, 2015](#))

The researcher believes that true multiple of offences can be defined as (the offender himself committed two or more offences, whether these offences are of a single type or of a different kind, whether all of these offences were committed in the same time or in different times, before he is sentenced to one of them).

The conditions of the true multiple of offences

That the offender commits two or more offenses by himself.

Most of legislations required that, such as the article 36 of the ([Egyptian Penal Code No. 58 of 1937](#)) and the article (132-2) of the ([Code, 1992](#)), the true multiple will be achieved when the offender, whether an original actor or an accomplice, commits two or more offences, whether these offenses are related to the unit of object or not, these offences are not required to be committed intentionally; all of them may be committed intentionally such as the offense of theft and murder intentionally; some of them may be committed intentionally and the other not intentionally.

Additionally, the multiple offences may be positive, i.e., they engage in positive behavior, or they be achieved by negative behavior. Furthermore, committing multiple acts/offences at a

time or close times, or in one place or several places, does not affect on the true multiple of offences and does not effect on the real motive of them (Amin Mustafa Muhammad, 2000)

A final judgment in one of the offences was not handed down/ Lack of final judgment in one of the offences:

the offender himself committed two or more offences is not sufficient in order to prove the existence of the true multiple of offences, but beyond that it is necessary the lack of handing down a final judgment in one of the crimes, such as committing of the offences of theft or misappropriation and the final judgment did not hand down in any one of these offences. This matter happens when someone gets away with the prosecution or he committed the crimes in a short time and he was not allowed to be tried, because during this period he's not in the grip of justice. In this case, the articles related to the true multiple shall be applied. But in case of handing down the judgment in one of offences, there will be no a case of true multiple. The paragraph (b) of the article (143) of the penal code referred to this, it provided that:" If a person is sentenced to a penalty for an offence was committed after a judgment was handed down on him for another offence, the two penalties shall be executed successively".

The second theme: The effect of the true multiple of offences in the penalty:

In this theme, we address the rule established for the penalty in the case of multiple offences as well as the effect of the true multiple in the original penalties/sentences:

first requirement: the rule of the multiple of penalties.

part1/section1: substance of the rule of the multiple of penalties

The basic rule which deals with the question of multiple of offences is the rule of the multiple of penalties. The rule of the multiple of penalties was called by many names such as "The actual multiple of penalties" or its equivalent in French "(multiplicité réelle des pénalités) in the electronic dictionary glosbe ". It was called also " collection of the penalties" (Jundi Abd al-Malik, 1931). The researcher believes that this name is due to the fact that it corresponds to its intended meaning. And even though there's a variety of names, all of them refer to one meaning which is (the offender who commit more than one offence, he shall be punished by the penalty prescribed for the offence)

The position of the penal legislations:

General rule adopted by the Iraqi legislator in the case of the multiples offences effectively is the rule of multiple penalties for multiple offences. This rule is applied to all of the offences whether they are felonies, misdemeanors or infractions, since the legislator provided that "if someone committed several crimes that are not linked and are not combined by a unit of object before being sentenced for one of them, he shall be sentenced to the prescribed penalty for every one of these offences which shall be executed successively" paragraph (a) of the article 143 of the penal code.

It's worth noting that a lot of the penal legislations adopted this rule such as the Egyptian legislator, since it provided that "There are numerous custodial penalties , penalties are always numerous with a fine" , also it provided that" There are numerous penalties for police surveillance", the article 33,37 and 38 of the Egyptian penal code; Likewise for the (3, 1987) of the Emirati penal code, and the Qatari legislator in the article (88) of the Qatari penal code. As for foreign legislations, the French legislator adopted this rule, since it provided that" If a person is convicted in one trial for multiple offences, he may be sentenced to all the prescribed penalties for these offences" (article 132/3) of the French penal code.

Most of the penal legislations which adopted the rule of the multiple penalties in the case of the true multiple of the offences, they did not leave the application of this rule without restrictions to avoid the excessiveness of the penalty. The two restrictions are: integration of penalty, not to increase penalties beyond a certain limit.

second requirement: the effect of the true multiple in the original, accessory and complementary penalties and the precautionary measures:

section/branch 1: the effect of the true multiple in the original penalties

the original penalties are these which must be imposed by the judge upon conviction of the accused person without the judgment being suspended by another penalty (Abbas & Hussein, 2016). The original penalties are either which robs the life such as the death penalty or which robs the freedom such as the detention and prison or a financial penalty such as the fine.

With respect to the effect of the true multiple of committing such offences: for the custodial penalties such as the detention or prison, the Iraqi legislator made clear the provision for a true multiple of offences if prescribed penalty for each of them is of the custodial penalty; in this case, the offender shall be punished by the penalty prescribed for each offence successively, this is referred to in article (143) of the penalty code, this also what was adopted by the Egyptian legislator (article 36 of the penal code) and the Emirati legislator in the article 99.

For the French legislator, it referred to three cases. The first one, it is if someone is convicted in one trial for several crimes, the adopted rule in this case will be the rule of multiple penalties. For the second one, if the offender has committed several offences and the prescribed penalty for these offences are the same, the offender shall be sentenced to only one such penalty which is the most severe, or what the French legislator called "the penalty with higher legal limit", and the French legislator referred to these two cases explicitly in the article (132/3). For the third one, it is "If someone is convicted in separate trials for multiple offences, sentences imposed together are executed within the higher legal limits". However, the penalty may be merged of the same type partially or totally, this what was referred explicitly in the article (132/4) of the penal code.

In the light of that, we find that the French legislator has decided two rules for the penalties in the case of the true multiple of the offences. The first one, rule of multiple penalties if the penalties are of a different nature. The second is the most severe penalty rule if the penalties are of one kind. In this regard, a question is raised about the arrangement of the various custodial penalties in the case of their multiple. When returning to the Iraqi legislator, we will find that he didn't address this question, but he stated the statement "successively", and this what was adopted by some of the penal legislations such as the article (91) of the (3, 1987) and the article (88) of the Qatari Penal Code.

With regard to financial penalties, the Iraqi legislator, in the paragraph (d) of the article (143) of the penal code, adopted the rule of the multiple of fines absolutely without any restrictions. Also, the Egyptian legislator adopted the same rule; in the article (37), he provided that "Penalties are always numerous with a fine".

Second section branch /: the effect of the true multiple in the accessory and complementary penalties, and the precautionary measures:

Most of the penal legislations including the Iraqi legislator had adopted the rule of "Multiple penalties for multiple offences" as a general rule in regard to the accessory and complementary penalties, and the precautionary measures, and then when the offender commits more than one offense, he shall be punished by accessory and complementary penalty for that offense, also the precautionary measures or what are called the criminal measures which were adopted in the second paragraph of the article 93 of the Emirati penal code. And then, the penalties and the measures shall be executed without any restrictions or exceptions except in the case of police surveillance (article 99 and 108 of the Iraqi Penal Code and article 73, paragraph 2, of the Emirati Penal Code), or what some legislations call police control (Article (iii) of the article 24 of the Egyptian Penal Code). Most of the legislations adopted this such as the Emirati, Qatari and French legislators.

As for the position of the Egyptian legislator, in light of the penal code, we will find that the legislator did not address the provision of the accessory penalty while the general rules require the multiple of the accessory penalties by the multiple of the original penalties in existence and non-existence, whereas the legislator showed the question of the multiple of penalties of the surveillance police and determined the term of this penalty, since he provided that "the

surveillance police penalty may be multiple, but it must not be more than five years ((Article 38 of the Penal Code).

Conclusion

After we have finished this research, we have reached several conclusions and recommendations:

Conclusions/ results

- 1- The term of the true multiple seemed to differ on it jurisprudentially and legislatively, since it was called by a lot of names, but all of these names refer to one meaning which is "the offender commits more than one crime himself, whether they are independent or linked to the unit of object".
- 2- There are two conditions to achieve the state of the true multiple. The first one is the objective condition which requires that" the offender himself commits two or more offences, whether they are independent or linked to the unity of purpose". For the second one, it is the procedural requirement which requires that" no final judgment be handed down in one of the offences".
- 3- The Iraqi legislator and some other legislations adopted the rule of the multiple of penalties in the case of the multiple offences while they did not leave the application of this rule without restrictions the first one is "integration of penalty, not to increase penalties beyond a certain limit". For the second restriction, it's about putting a certain limit on the multiple penalties imposed on the offender", since the Iraqi legislator and most of the penal legislations have restricted the custodial penalties that the total period of detention, or the total period of prison and detention together, do not exceed twenty-five years, also penalty of surveillance prison is also limited to five years. With regard to financial penalties, unlike some other legislations, it has not been restricted.

The recommendations

- 1- To call upon the Iraqi legislator to amend the text of article (142) of the Iraqi Penal Code in accordance with the following formulation:
 - (If several crimes have been committed with a single purpose and are inextricably linked, the penalty prescribed for each crime shall be imposed, and the order is issued to carry out the most severe penalty only, but this does not prevent the execution accessory and complementary penalties and the precautionary measures established by law or prescribed for other offences. If the offender had been tried for an offence with a lighter penalty, he may be tried later for an offence with a severe penalty. In this case, the court orders to execute the imposed penalty in the final judgment ordering with dropping what was actually implemented from the previous judgement). The reason for replacing the term "unit of object" with "unit of purpose" is the "object" is the near goal to which the will is directed, but the legislator wants the last goal of the criminal enterprise not the near one.
 - The consideration of the arrangement of the custodial sentence with the Iraqi legislator in the case of multiple of penalties, this will be by adding a new paragraph to the article (143) of the penal code, so we propose the following drafting : (if the custodial penalties vary in the case of their multiple, they must be executed according to the following arrangement: 1- life imprisonment, 2- temporary imprisonment, 3- rigorous imprisonment, 4- Simple imprisonment). the reason behind it, the Iraqi legislator did not clarify How to arrange penalties if they are multiple, but he stated the term if "succession", and he has not been successful in choosing this term.
 - We call or demand the Iraqi legislator to restrict the penalty of a fine to a certain extent in the case of its multiple, this will be by adding a new paragraph to the article (143) of the penal code, so we propose the following drafting: (all penalties shall be executed, provided that the amount of the fine shall not exceed, in any case of their multiple , one half of the property of the convicted person, and if the fine amounts are more than half of the convicted person's property, the judge may replace the amount of more than half of the

convicted person's wealth with a penalty of imprisonment, as he deems appropriate), the reason for this is that the multiple of fines penalties will lead to the loss of the convicted person's wealth, this will affect his family members and the people who depend on him especially if it leads to the complete end of the convicted person's property. with regard to the paragraph (d), it must be amended, so that this amendment will be consistent with what we asked the Iraqi legislator to do. Therefore, the drafting will be "the accessory and complementary penalties and precautionary measures shall be enforced/executed, however numerous, provided that the total duration of police surveillance shall not exceed five years".

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