

前所犯罪依軍法受裁判之累犯適用

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Keywords：Recidivist, Repetitive Criminal, Court Marshal, Combined Punishment, Previous Conviction

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摘 要

依刑法第 47 條規定：「（第 1 項）受徒刑之執行完畢，或一部之執行而赦免後，五年以內故意再犯有期徒刑以上之罪者，為累犯，加重本刑至二分之一。（第 2 項）第九十八條第二項關於因強制工作而免其刑之執行者，於受強制工作處分之執行完畢或一部之執行而免除後，五年以內故意再犯有期徒刑以上之罪者，以累犯論。」，我國採累犯制度。雖然現行刑法第 49 條：「累犯之規定，於前所犯罪在外國法院受裁判者，不適用之。」適用於所有內國判決，惟修正前之版本卻排除前案為本國軍事審判之適用。鑒於修正前有利於行為人之法律對被告而言仍屬有效，本文旨在探討修正前刑法第 49 條於前犯係受軍法裁判時之適用。

The Previous Court Marshall Judgment in Applying the recidivism

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Abstract

The ROC Criminal Code adopts the recidivism in Article 47: "(para. 1) A person, who intentionally commits an offense with a minimum punishment of imprisonment, within five years after having served a sentence of imprisonment or having been pardoned after serving part of the sentence, is a recidivist. The principal punishment for a recidivist shall be increased up to one and a half times of original punishment. (para. 2) A person, who has fully served a forced labor or has been discharged after serving part of the labor pursuant to paragraph 2 of Article 98 of the criminal code regarding imprisonment discharge from the labor, shall be deemed as a recidivist if he, within five years after having served the labor, intentionally commits an offense with a minimum punishment of imprisonment." While Article 49 of the criminal code: "Provisions related to recidivism shall not apply if a former offense is decided by a foreign tribunal." the current criminal code applies to all domestic former offenses, prior to the revised version of this Article that excludes all previous court-marshall decisions as well. This paper aims to clarify the scope of the old version's application since it is still valid if it favors for the accused.