

## **Abstract**

Recidivism is an ancient penalty system, and it is provided in criminal law in both Mainland and Macao. Due to historical reasons, Macao had been under the control of Portugal for a long time. Hence there are many differences in traditions and systems of criminal law between the two regions. Accordingly, the recidivist systems in the two regions are different. This article carries out a comparative study of the conception of recidivism, constitutive requirements and the legal consequence of recidivism in order to find out the differences between the two legislations. On the basis of referring to the related theories and the provisions of other countries' legislation, I analyze both merit and demerit of the two legislations and study the problems like juvenile recidivism and corporation recidivism and so on. Based on the above, I give some suggestions about the improvement and revolution of recidivism to both mainland and Macao. In general, this article is composed by the following five parts:

Part one, the comparative study of the conception of recidivism provided in both criminal laws. First, make a general introduction to the historical evolution of recidivism. And then make an analysis of the differences between the recidivism and other relative conceptions. Then starting from the research on the theory of actor recidivism and conduct recidivism, I make a comparative study of recidivism conceptions of the two regions. Pointing out that Macao adopts the definition of actor recidivism, while Mainland adopts the definition of conduct recidivism.

Part two, analyzing the requirements of establishment of common recidivism which is made up of subjective condition, penalty condition, time condition, subject condition as well as legal area condition. On the basis of analyzing the provisions of the two legislations, the article points out common places and differences of common recidivism in the two regions. Specifically, they both limit subjective condition to intentional crime, and the time conditions are also the same. But there are some differences in penalty condition, legal area condition as well as personal danger.

Part three, comparing the composing conditions of special recidivism of the two regions, including criminal quality requirement, time condition, penalty condition and subjective condition. Then point out the differences and similarities between them.

Part four, comparative study of the legal result of recidivism. First, I research into the theory of severer punishment and point out that it is based on a more serious

danger of the person. Second, according to analyze the relative provisions of recidivism punishment, pointing out that recidivism punishment in Macao is aggravated punishment, while heavier punishment in mainland. Last, studying the questions that parole system and probation system whether can be applied to recidivist. Pointing out that the provision which recidivist can not apply for parole is unreasonable.

Part five, the chief defects of the recidivist systems in the two regions and the improvement of legislation. In this part, the defects of the recidivist systems in the two regions will be further pointed out, such as problems with corporation recidivism, juvenile recidivism, and whether probation or parole is available for recidivist. And then I put forward the corresponding improvement suggestions like constructing the corporation recidivism system, a clear provision of juvenile's exemption from recidivism and so on.

**Key words: recidivism, composing conditions, personal danger, severer punishment**