假釋與撤銷問題的思辯

一兼論釋字第 681 號解釋之迷思

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關鍵字:假釋、假釋權、悛悔實據、刑罰權實現、撤銷假釋、悛悔實據、行刑累進處遇。

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摘 要

假釋制度的問題核心,應非在於刑罰執行期間的久暫,也不在於假釋期間的長短,更不在於假釋是否加以限制,假釋撤銷的條件為何。真正假釋的問題,應在於假釋權歸屬的基礎理念上。當無法正確對於假釋權的歸屬予以定位,則必然無法對於假釋核准與撤銷問題,作妥善的解決。從而衍生出大法官釋字第681號解釋,試圖對撤銷假釋救濟問題予以解決,卻仍舊功虧一簣!癥結所在,並不在於撤銷假釋的程序問題上,而是在於假釋權的歸屬錯誤所致,因此,解決假釋問題的首要之務,應重新檢討假釋權的歸屬,應將假釋決定權回歸法院,如此假釋存在的問題,乃至撤銷假釋的救濟問題,方得以迎刃而解。

The Speculation and debating regarding the Parole and the abandonment of parole — concurrently comment the misunderstanding of no. 681 explanation of the Grand Justice

Ko, Yao-Cheng

Abstract

The main problem about the parole system is the basic concept — what does the right of parole belong to? If we can not accurately find out its position, it is totally impossible for us to deal with the approbation and the abandonment of parole properly. Therefore, no.681 explanation of the Grand Justice is the derivative for trying to solve the problem about abandonment of parole but in vain. Therefore, the most important part for solving the problem about parole is reconfirming what the right of parole belongs to. This essay holds that it should belong to the court, then all the problems would be solved.