

跟追問題之探討

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關鍵詞：跟追、侵擾妨害、保護義務、危害防止、需罰性、應罰性

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摘 要

本文以大法官釋字第 689 號解釋為楔子，大法官於理由書中指出，跟追是否具備正當理由應「綜合考量跟追之目的，行為當時之人、時、地、物等相關情況，及對被跟追人干擾之程度等因素，合理判斷跟追行為所構成之侵擾，是否逾越社會通念所能容忍之界限」，社會通念之容忍尺度正是跟追依社會秩序維護法裁罰與否的標準。只是國外不少針對惡意的跟追行為施以刑罰制裁，我國家庭暴力防治法雖有處罰騷擾與跟蹤行為，但僅針對特定主體違反保護令的行為，適用範圍有限，從而現行法規範是否足以保障人民的權利，實有重新檢視現行法制之必要。

當跟追行為犯罪化成為世界趨勢時，國外累積的經驗與研究對建構國內跟追問題之抗制對策應能提供重要的參考。本文由國外的實證研究及規範模式切入，再轉回國內，從法規範角度分析跟追立法時的考量。對跟追行為犯罪化的前提做出建議，並闡明刑法的功能，最後針對我國目前的實況提出二項修法意見，包括擴大家庭暴力防治法的保護對象；以及社會秩序維護法的修改，尤其將現代民主憲政不可或缺的新聞自由一併納入，兼籌並顧，庶幾完善。

A Study on the Stalking

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Abstract

This study regards Judicial Yuan Interpretation No. 689 as the thin end of the wedge. In the reasoning of this interpretation, the great justices point out whether the stalking is justified or not should be based on the integrated consideration of the purpose of stalking, the related circumstances of persons, time, location, and objects as the conduct occurs to determine reasonably if the invasion and harassment caused by the conduct transgress the boundary that common sense can endure. The endurable standard of common sense is the same with the standard of penalty in the Social Order Maintenance Act. In some countries, penal sanctions are imposed against malicious stalking. In Taiwan, although harassment and stalking are punished in the Domestic Violence Prevention Act, the range to apply the law is restricted and it's necessary to review if current legal system is sufficient to protect people's right.

While the criminalization of stalking becomes a world's trend, overseas accumulated experiences and researches can provide significant references to construct domestic policy against stalking. This study analyzes the legislation of stalking from regulation' point of view by foreign empirical studies. Then make some suggestions to the criminalization of stalking behavior and clarify the function of criminal laws. In conclusion, this study offers two opinions of amending the law, including the available objects of the Domestic Violence Prevention Act needly to be enlarged and the modification of the Social Order Maintenance Act.