



從公民與政治權利國際公約論 死刑裁判之人權基準 — 最高法院近年相關裁判之綜合評析

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關鍵詞：公民與政治權利國際公約、人權事務委員會、一般性意見、死刑、生命權、死刑裁判、死刑辯論、情節最重大之罪、程序保障、公平審判

Keywords：International Covenant on Civil and Political Rights (ICCPR), Human Rights Committee (HRC), General Comments, Death Penalty, Right to Life, Death Penalty Related Judgments, Death Penalty Oral Arguments, the Most Serious Crimes, Procedural Guarantees, Fair Trial.

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摘 要

本文主要係探討自 2009 年 12 月 10 日兩公約施行法施行後至今，近 5 年之時間，公民與政治權利國際公約（下稱「公約」）的生命權概念、死刑裁判人權基準於我國最高法院近年刑事裁判之適用情形。本文先對公約中所涉之死刑裁判人權基準為介紹，諸如程序保障、情節最重大之罪、死刑裁判適用之對象限制，並輔以相關人權事務委員會（HRC）之所建立之案例法及相關解釋，此等說明將有助於本文後續之實務裁判分析；接著則是以 2012 年 12 月最高法院宣告往後就死刑裁判均應經三審言詞辯論此一時間點為分水嶺，劃分出「2009/12-2012/12」以及「2012/12-迄今」兩大時期，檢討公約生命權概念、死刑裁判人權基準於我國最高法院近五年之刑事裁判（2009-2014）之實踐，其中將一一歸納、說明，並就該等研究發現之缺失予以檢討；最後則提出於「死刑辯論」後立法論層次及司法實踐面上之反省與建議。

The Standard of Death Penalty Judgments Related to the ICCPR -An Analytical Comment on the Judgments of the ROC Supreme Court

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Abstract

To trace the article 6 and 7 of ICCPR (International Covenant on Civil and Political Rights) concerning the Right to life implement in the criminal justice practice and the trend of Taiwanese criminal procedure, the concept of "Right to life" and the practical cases made by Taiwan Supreme Court (TSC) during the past five years(2009-2014) were examined in this paper. Through the examination of the TSC judgments towards some significant issues, such as the right to life (article 6), capital punishment, "the most serious crimes", procedural guarantees, etc., we discovered the facts as below.

Firstly, to show the application of the Convention, the TSC always cites the Article of the ICCPR in the criminal judgments, but there is no further specific standards and interpretation for dealing with individual cases. And in some cases, some misunderstanding of the interpretation in ICCPR even exists. Secondly, the opinions made by different judges from the TSC are often against each other. As a result, the predictability of sentence and human rights are sacrificed. Therefore, the TSC judgements on criminal cases not only violated the ICCPR but also forced the TSC to face distrust of the people. This paper finally concludes that it is necessary for the TSC to reconsider its long-term neglect of the correct interpretation in ICCPR, especially on the human rights standards of death penalty and related cases. Besides, to reduce these negative impacts, a system inside the TSC can help standardize the current inconsistent views on death penalty that shall be presented to be accurately established by the legislative authority.