

On the Adjudication of Death Penalty and its Limitation in Regard to ICCPR and Comparative Law

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Abstract

On 10th day of Dec. 2009, International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR) were promulgated in Taiwan by enacting a special implementation Act. This has brought many influences on the Criminal justice system. And the most prominent one of them is regarding to death penalty. The Supreme Court has not only established a formal procedure of argument for sentencing death penalty but also, with made some decisions, announced the primitive criteria under the Article 6 "right to life" of ICCPR. Among them, there are demands of both the most serious crime, in substance and the guarantee of due process, in procedure. Thereto for a proceeding trial, it is more important that how a court to take all factors into consideration, including the sentencing theory, and then make a proper capital decision.

In this article, the author combines not only the decisions made by Supreme Court but also the ICCPR and comparative Japanese practice of sentencing death penalty. He tries to find a practical and applicable way for the court to make a capital decision as well as its limitation under the situation of non-abolition in present Taiwan.

Keywords: death penalty, sentencing, ICCPR and ICESCR, right to life, the sentencing factors, the most serious crimes

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