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**J.Y. Interpretation No. 476 (January 29, 1999)\***

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**Capital Punishment in Drug Control Laws Case**

**Issue**

Are the provisions in the drug control laws that sanction capital punishment or life imprisonment unconstitutional?

**Holding**

[1] The right to liberty and security of person and the right to life should be guaranteed, as expressed by Articles 8 and 15 of the Constitution. However, fulfilling the state's penal powers requires special/exceptional criminal laws, which are enacted to punish certain offenses in specific fields. They should not be considered a violation of the principle of proportionality as long as they meet the requirements of Article 23 of the Constitution, *i.e.*, the legitimacy of the objectives, the necessity of the measures, and the proportionality of the restrictions (or proportionality *stricto sensu*). Such exceptional criminal laws, which cannot be equated to ordinary criminal laws, should not be deemed unconstitutional merely on the basis of the right to liberty and security of person and the right to life.

[2] The Narcotics Elimination Act, revised and promulgated on July 27, 1992, and the Drug Control Act, revised and promulgated on May 20, 1998, were legislated with the purposes to eliminate narcotics and to control the harm of drugs, thereby protecting the physical and mental health of our nationals, maintaining social order and preventing threats to our national security. To eradicate the scourge of drugs, it is of the utmost importance to cut off their supply; their sources must be intercepted to root out the plague. And the source of the

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\* Translation by Li-Chih LIN

plague is the manufacture, transport and sale of drugs. If these cannot be eliminated, the harm of drugs will spread widely, endangering not only the lives and well-being of a great number of people but also the legal interests of society and the entire nation. This harm far outweighs the legal interests of an individual's life and personal freedoms. It is therefore in keeping with the principle of proportionality to enact exceptional laws that strictly punish such misconduct, which is highly lawless in nature. In addition, the activities of manufacturing, transporting and selling drugs generate lucrative profits, which inevitably attract many people who are willing to run that risk. To deter these activities merely with a sanction of long-term imprisonment will not only be ineffective but also unfair and unjust. Article 5, Paragraph 1 of the Narcotics Elimination Act provides that "anyone who sells, transports or manufactures narcotics, opium or marijuana shall be sentenced to death or life imprisonment." Article 4, Paragraph 1 of the Drug Control Act provides that "anyone who manufactures, transports or sells first-grade drugs should be sentenced to death or life imprisonment. A fine of no more than TWD 10,000,000 may be imposed on those sentenced to life imprisonment." The legal provisions of capital punishment and life imprisonment were enacted for the purpose of strictly controlling drugs under the exceptional laws and are necessary to maintain national security and social order and promote the public interest. They do not violate Article 23 of the Constitution; nor are they inconsistent with Article 15 of the Constitution.

### **Reasoning**

[1] While Articles 8 and 15 of the Constitution protect the right to liberty and security of person and the right to life, in order to fulfill the state's penal powers, the Legislature may, for certain purposes, enact exceptional criminal laws to punish certain offenses for specific matters. These laws are distinct from ordinary criminal laws in terms of the offenses that they seek to punish. To the extent that

the legislative purposes of such exceptional laws do not depart from the expectations of our nationals and are in keeping with their notions of justice in light of the nation's historical origin, cultural background and social reality, they should be not considered illegitimate. The actions taken to facilitate such goals—the necessary restrictions imposed on people's fundamental rights—are justified, as they are critical to rectifying extraordinary wrongs. They should therefore be deemed consistent with the principle of proportionality under Article 23 of the Constitution. These exceptional laws, which have taken into consideration the balance between the means and ends in assessing specific crimes and determining their punishments, are distinctive, from ordinary criminal laws and the punishments under them. The value system reflected in these exceptional laws should not be negated merely by the value judgment of individuals; they should not be deemed unconstitutional on the basis of the right to liberty and security of person and the right to life.

[2] Since the end of the Qing Dynasty and the founding of the Republic of China, narcotics have done profound damage to our nation for a period of more than a hundred years. Those who once use narcotics become addicted and frail for the rest of their lives. Countless are the cases in which people, due to addiction, lose jobs and families and unscrupulously commit other crimes. Those who manufacture, transport or sell drugs are driven by the singular goal of increasing drug use to generate profits. They entice others to spread drug use and induce addiction. The harm to our national economy and the people's livelihood is appalling, as it leads to the decadence of our productive population. The spread of drugs weakens our people's collective spirit and health; our country cannot be well-armed with a debilitated population. This is not only harm to a few individuals and families, but a great evil for society and the nation, which must be addressed by severe laws and enforcement. To eradicate drugs requires taking action at an early stage, with the urgent task of addressing the very origin of the

problem. If one fells a tree without removing it at the root, it will certainly grow back; if one seeks to stem a tide without eliminating the source of the flood, it will certainly flood again. Once the source of the problem is removed, the rest will dissipate.

[3] In response to the disastrous spread of narcotics through rampant cross-national sales, the Narcotics Elimination Act was revised and promulgated on July 27, 1992, and the Drug Control Act was revised and promulgated on May 20, 1998. The purposes of these Acts are to prohibit narcotics from being imported from other countries, track their flows, and to prevent and punish crimes involving narcotics. In other words, these Acts were enacted to eliminate narcotics and prevent the harm of drugs, thereby protecting the physical and mental health of our nationals, maintain social order and prevent threats to our national security. To eradicate the scourge of drugs, it is of the utmost importance to cut off its supply; by intercepting their sources, the flow can be blocked and the problem eradicated. The manufacture, transport and sale of drugs are the source of the epidemic. An indecisive and wavering approach would only lead to an ever-growing population of drug addicts. The spread of drugs would harm not only the legal interests of a large number of people in their physical well-being, but also the legal interests of society and the entire nation. One need not look far in our history for this lesson. Serious condemnation of and severe punishment for this specific misconduct [in these Acts] is properly based on practical considerations. Such a legal assessment is different from that of homicide, which infringes on individual legal interests. Moreover, in addition to comprising a high degree of lawlessness, the activities of manufacturing, transporting and selling drugs generate lucrative profits, which inevitably attract many people who are willing to run the risk. To deter these activities merely with a sanction of long-term imprisonment will not only be ineffective but also unfair and unjust. Article 5, Paragraph 1 of the Narcotics Elimination Act provides that “anyone who sells,

transports or manufactures narcotics, opium or marijuana, shall be sentenced to death or life imprisonment.” Article 4, Paragraph 1 of the Drug Control Act provides that “anyone who manufactures, transports or sells first-grade drugs should be sentenced to death or life imprisonment. A fine of no more than TWD 10,000,000 may be imposed on those sentenced to life imprisonment.” These legal provisions of capital punishment and life imprisonment were enacted for the purpose of strictly controlling drugs under these special laws and are necessary to maintain national security and social order and promote the public interest. They do not violate Article 23 of the Constitution; nor are they inconsistent with Article 15 of the Constitution.

[4] The petition also challenged the judicial interpretation (by ordinary courts) of Article 7, Paragraph 1 of the Narcotics Elimination Act on the criminal offense of possessing narcotics with intent to sell and Article 5, Paragraph 1 of the Drug Control Act on how to interpret the term “sale.” The former was not included in the facts of the indictment, as demonstrated by the original copy of the indictment on file. As it was not included in the indictment, it did not fall within the scope of the trial. In addition, the petitioner failed to explain how the legal provision in question was a legal question that should be decided at trial, and therefore it should not be subject matter for this Court’s interpretation. As to the latter question of how to understand the term “sale,” it is a matter for ordinary courts to interpret. Neither of these issues involves the question of whether the law is in contradiction with the Constitution. As these challenges do not accord with the holding of *J.Y. Interpretation No. 371*, they are therefore dismissed, as noted in the present interpretation.

### **Background Note** by Yu-Jie CHEN

This petition was filed by a judge of Taipei District Court in accordance with the procedure provided for in *J.Y. Interpretation No. 371*, which allows

judges of lower courts to petition the Constitutional Court if they have reasonable grounds to regard a statute applicable in their trials as unconstitutional. The petitioning judge, who was trying several cases involving the Narcotics Elimination Act (which was replaced by the Drug Control Act in 1998) and the Drug Control Act, contended that the relevant legal provisions in these two Acts that imposed capital punishment or life imprisonment on those who manufacture, transport and sell drugs should be deemed unconstitutional as they appeared disproportionately severe (especially in comparison to the punishment of violent crimes such as murder, which was punishable by no more than ten years of imprisonment, life imprisonment or death). The petitioner also argued that these legal provisions should be deemed unconstitutional by virtue of violating the rights to life and human dignity. The Court disagreed with these claims.

The significance of this interpretation, issued in 1999, was the decision to affirm the constitutionality of the death penalty for non-violent crimes. This was not the first time the Constitutional Court ruled on the constitutionality of capital punishment. In J.Y. Interpretation No. 194, issued in 1985, the Court ruled that the mandatory death penalty imposed on those who sold drugs, as stipulated by Article 5, Paragraph 1 of the Drug Control Act during the Period for Suppression of the Communist Rebellion, was constitutional. In J.Y. Interpretation No. 263, issued in 1990, the Court also ruled that the mandatory death penalty imposed on those who committed kidnapping with the intention of receiving ransom, as stipulated in the Robbery Punishment Act, was constitutional. Over the years, a number of civil society groups and activists have sought to petition to the Court to challenge the death penalty. To date, this interpretation, along with J.Y. Interpretation No. 194 and 263, remain the authoritative opinions of the Constitutional Court on the constitutionality of the death penalty.