

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

**ISSUE:** If some special criminal laws enacted for certain crimes have the due purposes, necessary means, and proper restrictions required by Article 23 of the Constitution, are those special criminal laws unconstitutional merely because they may infringe upon the people's lives and physical freedom, thus violating the people's right to life and physical freedom?

**RELEVANT LAWS:**

Articles 8, 15 and 23 of the Constitution ( 憲法第八條、第十五條、第二十三條 ) ; Article 5, Paragraph 1 of the Narcotics Elimination Act ( 肅清煙毒條例第五條第一項 ) ; Articles 4, Paragraph 1 of the Drug Control Act ( 毒品危害防制條例第四條第一項 ) .

**KEYWORDS:**

physical liberty ( 人身自由 ) , survival rights ( 生存權 ) , the proportional principle ( 比例原則 ) , narcotic addiction ( 毒癮 ) , death sentence ( 死刑 ) , life imprisonment ( 無期徒刑 ) , judiciary interpretation ( 司法解釋 ) , constitutionality ( 合憲 ) .\*\*

**HOLDING:** The physical freedom and right to life are expressly guaran-

**解釋文：**人民身體之自由與生存權應予保障，固為憲法第八條、第十

\* Translated by Li-Chih Lin, Esq., J.D.

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teed by Articles 8 and 15 of the Constitution. However, to execute criminal sanctions, some special criminal laws enacted for certain crimes do not violate the principle of proportionality if they have the due purposes, necessary means, and proper restrictions required by Article 23 of the Constitution. They will not be deemed inconsistent with the regulations set forth in the general criminal laws and thus be held unconstitutional merely because they may infringe upon people's lives and physical freedom.

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 those Acts are to protect the physical and mental health of the people, to maintain the social order and to safeguard against a national crisis by preventing narcotics addiction and eliminating narcotics. Their primary task is to cut off the supply of narcotics in order to totally eliminate the damage done by narcotics. The manufacture, transportation, and sales of narcotics are the sources of

五條所明定；惟國家刑罰權之實現，對於特定事項而以特別刑法規定特別之罪刑所為之規範，倘與憲法第二十三條所要求之目的正當性、手段必要性、限制妥當性符合，即無乖於比例原則，要不得僅以其關乎人民生命、身體之自由，遂執兩不相侔之普通刑法規定事項，而謂其係有違於前開憲法之意旨。

中華民國八十一年七月二十七日修正公布之「肅清煙毒條例」、八十七年五月二十日修正公布之「毒品危害防制條例」，其立法目的，乃特別為肅清煙毒、防制毒品危害，藉以維護國民身心健康，進而維持社會秩序，俾免國家安全之陷於危殆。因是拔其貽害之本，首予杜絕流入之途，即著重煙毒來源之截堵，以求禍害之根絕；而製造、運輸、販賣行為乃煙毒禍害之源，其源不斷，則流毒所及，非僅多數人之生命、身體受其侵害，并社會、國家之法益亦不能免，為害之鉅，當非個人一己之生命、身體法益所可比擬。對於此等行為

narcotic damage. If the sources of narcotics cannot be found and eliminated, the damage caused by narcotics will spread and endanger the people's lives and well-being as well as affect the society and the entire nation. The significance of the damage caused to the society and the entire nation outweighs the legal interests of an individual. Special criminal laws with strict regulations enacted to eliminate the manufacture, transportation, and sales of narcotics therefore ought to conform to the principle of proportionality. In addition, such activities can generate considerable profit, which will attract a lot of people who want to make easy money by engaging in them. To deter and prohibit 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 engages in the sales, transportation, and manufacture of narcotics, opium or marijuana, should be sentenced to death or life imprisonment. Article 4, Paragraph 1, of the Drug Control Act provides that anyone who engages in the manufacture,

之以特別立法嚴厲規範，當已符合比例原則；抑且製造、運輸、販賣煙毒之行為，除有上述高度不法之內涵外，更具有暴利之特質，利之所在，不免群趨僥倖，若僅藉由長期自由刑措置，而欲達成肅清、防制之目的，非但成效難期，要亦有悖於公平與正義。肅清煙毒條例第五條第一項：「販賣、運輸、製造毒品、鴉片或麻煙者，處死刑或無期徒刑。」毒品危害防制條例第四條第一項：「製造、運輸、販賣第一級毒品者，處死刑或無期徒刑；處無期徒刑者，得併科新臺幣一千萬元以下罰金。」其中關於死刑、無期徒刑之法定刑規定，係本於特別法嚴禁毒害之目的而為之處罰，乃維護國家安全、社會秩序及增進公共利益所必要，無違憲法第二十三條之規定，與憲法第十五條亦無抵觸。

transportation, and sales of first-grade narcotics, should be sentenced to death or life imprisonment. Additionally, a fine not to exceed the amount of NT 10 million dollars may be imposed on those who are sentenced to life imprisonment. These statutory regulations which impose the death penalty and life imprisonment on anyone who engages in such activities are sanctions for the purpose of strictly prohibiting these activities under the special criminal laws and are necessary to maintain national security, the social order and to promote the public welfare, and thus are consistent with the regulations set forth in Article 23 of the Constitution, and are also in accordance with Article 15 of the Constitution.

**REASONING:** The people's physical freedom and right to life are expressly guaranteed by Articles 8 and 15 of the Constitution. However, to execute criminal sanctions, some special criminal laws for certain crimes are enacted by the legislature with designated purposes in order to distinguish them from the general criminal laws. In view of national history,

**解釋理由書：**憲法第八條、第十五條固明定人民身體之自由與生存權應予保障；惟國家刑罰權之實現，立法機關本於一定目的，對於特定事項而以特別刑法規定特別之罪刑，以別普通刑法於犯罪及刑罰為一般性規定者，倘該目的就歷史淵源、文化背景、社會現況予以觀察，尚無違於國民之期待，且與國民法的感情亦相契合，自難謂其非屬

culture, and current social conditions, these special criminal laws should not be deemed improper if their purposes aim to conform to the nationals' expectations and the affection of the laws. In addition, these special criminal laws should be deemed consistent with the principle of proportionality (*Verhältnismäßigkeitsprinzip*) under Article 23 of the Constitution if the methods used to achieve such purposes are necessary to correct and prevent mistakes and are also reasonable actions to take even though they restrict the people's fundamental rights. The balance between the means and ends is prescribed in these special criminal laws. In consideration of protecting legal interests, special criminal laws contrary to the regulations set forth in the general criminal laws should not be deprived of their legal value solely based on personal judgment. In addition, those special criminal laws will not be held unconstitutional for the reason that they may infringe upon people's lives and physical freedom and thus violate the peoples' right to life and physical freedom guaranteed by the Constitution.

正當；而其為此所採取之手段，即對於人民基本權利為必要之限制，乃補偏救弊所需，亦理所當為者，即應認係符合憲法第二十三條之比例原則。至於其依循上述目的與手段間之均衡，就此等特定犯罪之評價所為之法定刑規定，在法益保護之考量上，普通刑法之其他犯罪與之並不相侔者，尤不得單以個人之價值判斷，執以否定立法之價值體系，而以其關乎人民生命、身體自由之乙端，即謂係有違於前開憲法規定之保護意旨。

From the end of the Ching Dynasty to the founding of the Republic of China, a period of nearly a hundred years, narcotics had a profound and negative impact on our nation. Anyone who once uses narcotics will become addicted for the rest of his/her life. Many people have lost their jobs and families because of their narcotic addiction and people who commit crimes due to such addiction are also numerous. The manufacture, transportation and sales of narcotics provide the source of narcotics for the public. Those who engage in such activities can generate greater profits if more people become addicted; thus, they may invite friends and/or acquaintances to join their illegal activities in order to help them produce and supply more narcotics to the public. As a result, many young and talented nationals have become addicted and thus are unable to defend the nation because their physical and mental health have been seriously damaged by narcotics. The damage caused by narcotics will spread and endanger the society and the entire nation. Therefore, those who engage in the manufacture, transportation and sales of narcotics should be

煙毒之遺害我國，計自清末以迄民國，垂百餘年，一經吸染，萎靡終身，其因此失業亡家者，觸目皆是，由此肆無忌憚，滋生其他犯罪者，俯首即得；而製造、運輸、販賣無非在於使人吸食，其吸食者愈眾，則獲利愈豐，因是呼朋引類，源源接濟，以誘人上癮為能事。萃全國有用之國民，日沈湎於鴉毒之鄉而不悔，其戕害國計民生，已堪髮指；更且流毒所及，國民精神日衰，身體日弱，欲以鳩形鵠面之徒，為執銳披堅之旅，殊不可得，是其非一身一家之害，直社會、國家之鉅蠹，自不得不嚴其於法；而欲湔除毒害，杜漸防萌，當應特別以治本截流為急務，蓋伐木不自其本，必復生；塞水不自其源，必復流，本源一經斷絕，其餘則不戢自消也。

severely punished by laws. To eliminate the damage done by narcotics and to prevent narcotic addiction, the sources of narcotics should be cut off immediately by prohibiting the manufacture, transportation and sales of narcotics.

In response to the spread of damage caused by narcotics and mass international sales of narcotics, 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 being illegally imported from other countries, find the sources of narcotics, and to prevent crimes involving narcotics. In other words, these Acts are enacted to protect the physical and mental health of the nationals, further maintain the social order and to safeguard against a national crisis by eliminating the sources of narcotics and preventing addiction to narcotics. Because these two Acts are enacted to eliminate the sources of narcotics, thus their primary purpose is to cut off the supply of narcotics in order to totally eliminate the

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damage done by narcotics. The manufacture, transportation, and sales of narcotics are the sources of narcotic damage. If the sources of narcotics cannot be found and eliminated, the damage caused by narcotics will spread and endanger the individuals' lives as well as the society and the entire nation. Therefore, these two Acts are properly enacted by the legislature under some practical considerations, and illegal activities involving the manufacture, transportation, and sales of narcotics sanctioned under said Acts should be treated differently from general criminal acts. In addition, such activities can generate considerable profit, which will attract a lot of people who want to make easy money by engaging in them. To deter and prevent such activities merely with a sanction of long-term imprisonment will not only be ineffective but also be unfair and unjust. Article 5, Paragraph 1, of the Narcotics Elimination Act provides that anyone who engages in the sales, transportation, and manufacture of narcotics, opium or marijuana, should be sentenced to death or life imprisonment. Article 4, Paragraph 1, of the Drug Control Act pro-

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vides that anyone who engages in the manufacture, transportation, and sales of first-grade narcotics, should be sentenced to death or life imprisonment. Additionally, a fine not to exceed the amount of NT 10 million dollars may be imposed on those who are sentenced to life imprisonment. These statutory regulations which impose the death penalty and life imprisonment on anyone who engages in the sales, transportation, and manufacture of narcotics are sanctions for the purpose of strictly prohibiting such activities under the special criminal laws and these regulations are necessary to maintain national security, the social order and to promote the public welfare; thus, they are consistent with the regulations set forth in Article 23 of the Constitution, and are also in accordance with Article 15 of the Constitution.

The petitioners have filed two motions for judiciary interpretation: one is on Article 7, Paragraph 1, of the Narcotics Elimination Act governing the criminal offense of possessing narcotics with intent to sell and the other one is on the term

關於意圖販賣而持有毒品罪之肅清煙毒條例第七條第一項、毒品危害防制條例第五條第一項暨「販賣」之司實務見解聲請解釋部分，前者為起訴事實所未記載，此有在卷之起訴書正本可法稽，既不在起訴之列，當不屬審判之範

“sales” in Article 4, Paragraph 1, of the Drug Control Act governing the sales of narcotics. The former was not alleged in the facts of the indictment and this is evident by the original copy of the indictment on record. Since the criminal offense in possessing narcotics with intent to sell was not alleged in the indictment, it is therefore not an issue for trial. In addition, the petitioners have failed to provide an explanation as to the applicability of Article 7, Paragraph 1, of the Narcotics Elimination Act to the petitioners’ case; hence, it is therefore not subject matter for judiciary interpretation. With regard to the interpretation of the term “sales” in Article 4, Paragraph 1, of the Drug Control Act, opinion varies on this point; it is therefore not an issue of the constitutionality of the applicable law. Since neither of the petitioners’ motions is in compliance with the holding of J.Y. Interpretation No.371, both motions for judiciary interpretation are therefore dismissed accordingly.

圍，聲請人復未說明其如何係屬於審理該等案件所應適用之法律，自非得以之為聲請解釋之對象；至於後者販賣一詞，概念上究應為如何之闡釋，乃見解之問題，非屬法律本身適用牴觸憲法之疑義，均不符合本院釋字第三七一號解釋之意旨，應不予受理，附此敘明。