J. Y. Interpretation No.263（July 19, 1990）*

ISSUE: Does the mandatory death penalty, as stipulated in the Robbery Punishment Act, violate the Constitution?

RELEVANT LAWS:

Article 15 of the Constitution（憲法第十五條）; Articles 2 and 8 of the Robbery Punishment Act（懲治盜匪條例第二條、第八條）; Articles 59, 167 and 347 of the Criminal Code（刑法第五十九條、第一百六十七條、第三百四十七條）.

KEYWORDS:

mandatory death penalty（死刑）, kidnap（擄人）, robbery（勒贖）.**

HOLDING: Article 2, Paragraph 1, Subparagraph 9, of the Robbery Punishment Act, which is a special criminal law, imposes a mandatory death penalty on those who commit kidnapping with the intention of receiving ransom regardless of the details and results of their crimes. This penalty is very rigorous. However, according to Article 8 of the same Act, a judge, upon determining that the penalty

解釋文：懲治盜匪條例為特別刑法，其第二條第一項第九款對意圖勒贖而擄人者，不分犯罪情況及結果如何，概以死刑為法定刑，立法甚嚴，惟依同條例第八條之規定，若有情輕法重之情形者，裁判時本有刑法第五十九條酌量減輕其刑規定之適用，其有未經取贖而釋放被害人者，復得依刑法第三百四十七條第五項規定減輕其刑，足以避免過嚴之刑罰，與憲法尚無牴觸。

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is too severe to be applied to a certain case, may apply to Article 59 of the Criminal Code to reduce the penalty. The penalty on those who release victims without taking ransom, according to Article 347, Paragraph 5, of the Criminal Code, may also be reduced. Both of them can avoid rigorous penalty. Therefore, Article 2, Paragraph 1, Subparagraph 9, of the Robbery Punishment Act is not contrary to the Constitution.

REASONING: Article 347, Paragraph 1, of the Criminal Code reads: "Those who commit kidnapping with the intention of receiving ransom will be sentenced to death, imprisonment for life or imprisonment for more than 7 years." Article 2, Paragraph 1, Subparagraph 9, of the Robbery Punishment Act, which is a special criminal law, imposes a mandatory death penalty on those who kidnap with the intention of receiving a ransom. Its purpose is to increase the penalty to prevent such crimes, to maintain the security of the society, and to keep the public free from fear. Imposing a mandatory death penalty on those who commit such crimes

解釋理由書：刑法第三百四十七條第一項規定：「意圖勒贖而擄人者，處死刑、無期徒刑或七年以上有期徒刑」。懲治盜匪條例為特別刑法，其第二條第一項第九款對意圖勒贖而擄人者處死刑之規定，則旨在提高意圖勒贖而擄人罪之刑度，期能遏阻此種犯罪，維護治安，使社會大眾免於遭受擄人勒贖之恐懼。此項規定，不分犯罪之情況及其結果如何，概以死刑為法定刑，立法甚嚴，有導致情法失平之虞，宜在立法上兼顧人民權利及刑事政策妥為檢討。惟依同條例第八條之規定，上述擄人勒贖案件，仍適用刑法總則及刑法分則第一百六十七條、第三百四十七條第五項之規定。裁判時若有情輕法重之情

regardless of their details and results is indeed very rigorous, and may create an imbalance between the legal system and the people's sense of justice. A review of legislation is therefore needed in order to maintain equilibrium between the rights of the people and criminal policy. However, according to Article 8 of the same Act, Article 167 and Article 347, Paragraph 5, of the Criminal Code can be applied to the above-mentioned criminal cases. A judge, upon determining that the penalty is too severe to be applied to a certain case, may apply to Article 59 of the Criminal Code to reduce the penalty. The penalty can also be reduced when criminals release victims without taking any ransom. Both of them can avoid over rigorous punishment. Consequently, it can not be established that Article 2, Paragraph 1, Subparagraph 9, of the Robbery Punishment Act is contrary to the Constitution.

形者，本有刑法第五十九條酌量減輕其刑規定之適用，其有未經取贖而釋放被害人者，亦得減輕其刑，足以避免過嚴之刑罰。是上開懲治盜匪條例第二條第一項第九款之規定，尚難謂與憲法牴觸。