

J. Y. Interpretation No.194 (March 22 , 1985) *

ISSUE: Does the mandatory death penalty according to Article 5, Paragraph 1, of the Drug Control Act during the Period for Suppression of the Communist Rebellion violate the Constitution?

RELEVANT LAWS:

Articles 7 and 23 of the Constitution (憲法第七條、第二十三條) ; Article 5 , Paragraph 1 of the Narcotics Elimination Act during the Period for Suppression of the Communist Rebellion (戡亂時期肅清煙毒條例第五條第一項) .

KEYWORDS:

death penalty (死刑) , drug (毒品) , constitutional interpretation (解釋憲法) .**

HOLDING: Article 5, Paragraph 1, of the Narcotics Elimination Act during the Period for Suppression of the Communist Rebellion reads: “The death penalty will be imposed on those who traffic in illegal drugs,” which is indeed rigorous. However, this provision was enacted to eliminate drug trafficking in order to

解釋文：戡亂時期肅清煙毒條例第五條第一項規定：販賣毒品者，處死刑，立法固嚴，惟係於戡亂時期，為肅清煙毒，以維護國家安全及社會秩序之必要而制定，與憲法第二十三條並無牴觸，亦無牴觸憲法第七條之可言。

* Translated by Dr. R.T.Liao.

** Contents within frame, not part of the original text, are added for reference purpose only.

maintain national security and social order during the period for suppression of the communist rebellion. It is not contrary to either Article 7 or 23 of the Constitution.

REASONING: The Narcotics Elimination Act during the Period for Suppression of the Communist Rebellion is a special criminal law of which Article 5, Paragraph 1, provides: “The death penalty will be imposed on those who traffic in illegal drugs.” It is indeed a rigorous rule. However, if the drug traffic had not been outlawed during the period for suppression of the communist rebellion, public health, national security and social order would have been endangered. This provision is therefore not contrary to Article 23 of the Constitution. Furthermore, the application of Article 5, Paragraph 1, of the Act does not discriminate by gender, religion, race, class or political party. Thus, this provision is not contrary to Article 7 of the Constitution. It should also be noted that the applicant’s claim that the final and binding judgment T. F. T. No. 23 (Sup. Ct., 1983) bases its evidence solely on the words of the applicant and other

解釋理由書：戡亂時期肅清煙毒條例為特別刑法，其第五條第一項：「販賣、運輸、製造毒品或鴉片者，處死刑」之規定，立法固嚴，惟因戡亂時期，倘不澈底禁絕煙毒，勢必危害民族健康、國家安全及社會秩序，故該項規定與憲法第二十三條並無牴觸。又該條例第五條第一項規定，並不因男女、宗教、種族、階級、黨派之不同而異其適用，亦無牴觸憲法第七條之可言。至聲請人指摘最高法院七十二年度台覆字第二三號確定終局判決，係以聲請人之自白及共同被告之不利自白，作為有罪判決之唯一證據等情，不在解釋憲法範圍以內，併予敘明。

defendants is not within the ambit of constitutional interpretation.

Justice Wei-Kuang Yiau filed dissenting opinion.

本號解釋姚大法官瑞光提出不同意見書。