

國立中正大學 100 學年度犯罪防治學系博士班入學考試

科目：法學研究方法

※得參考無註記之英文辭典※

一、試列舉相關法條詳細解釋下列名詞的異同或關係(50 %)：

- (一) 解釋論 (Theorie der Aufklärung) 與立法論 (Theorie der Gesetzgebung)
- (二) 刑法改革 (Strafrechtsreformen) 與法學研究 (Rechtsforschung)

二、試將下列英文翻譯為中文，並請回答下列問題(50%)：

A 'Most Serious Crime?' – The Death Penalty for Drug Offences and International Human Rights Law

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International Centre on Human Rights and Drug Policy

Amicus Journal, No. 21, pp. 21-28, 2010

Abstract:

This article provides an in-depth analysis of the international law ramifications of applying the death penalty for drug offences. It reviews the 'most serious crimes' threshold for the lawful application of capital punishment as established in the International Covenant on Civil and Political Rights. It then explores the question of whether drug offences meet this threshold by examining the issue through the lenses of international human rights law, the domestic legislation in retentionist states, international narcotics control law, international refugee law and international criminal law. The article concludes that drug offences do not constitute 'most serious crimes', and that executions of people for drug offences violates international human rights law.

Introduction

In contrast to the international trend towards the abolition of capital punishment, the number of countries applying the death penalty to drug offenders has increased over the past twenty years. Under the international Covenant on Civil and Political Rights (ICCPR), the use of capital punishment, while not prohibited, is restricted in several ways. One of the key restrictions is contained in Article 6(2), which states that the penalty of death may only be applied for the "most serious crimes". Many retentionist States argue that drug crimes fall under this umbrella of the "most serious crimes".

- (一) 比較刑事(司)法與比較刑事政策有何關係？何謂“most serious crimes”？國際法扮演之角色為何？
- (二) 比較刑事(司)法在進行研究時，應該注意之處為何？
- (三) 死刑與毒品犯罪之爭議問題，在比較研究時，應該特別注意之處為何？