

Abolition of a death penalty -- From the viewpoint of constitutional law and  
international human rights law

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Contents

1. Death penalty and the Japanese constitution
  - (1) Constitutionality of a death penalty
  - (2) Issues concerning execution of death penalty
  - (3) Death penalty viewed from the human rights theory
2. Argument between retention and abolition of death penalty
  - (1) advocacy of retention
  - (2) advocacy of abolition
3. Death penalty from a viewpoint of international human rights law
  - (1) The trend of the United Nations and EU
  - (2) The international trend of abolition of death penalty
  - (3) In the case of Asia
4. Death penalty viewed from the human rights theory

1. Death Penalty and Constitution

- (1) Constitutionality of death penalty
- (2) Issues in the process of execution of death penalty
- (3) death penalty seen from the human rights theory

◆ Articles of the Japanese Constitution about death penalty

Article 13 "All of the people shall be respected as individuals. Their right to life, liberty, and the pursuit of happiness shall, to the extent that it does not interfere with the public welfare, be the supreme consideration in legislation and in other governmental affairs."

Article 31 "No person shall be deprived of life or liberty, nor shall any other criminal penalty be imposed, except according to procedure established by law."

Article 36 "The infliction of torture by any public officer and cruel punishments are absolutely forbidden."

(2) Issues in the process of execution of death penalty

- ① Unconstitutionality of statutes which define death penalty
- ② Unconstitutionality of the decision which sentences to death penalty
- ③ Unconstitutionality of the procedure to execution of death penalty
- ④ Unconstitutionality of the execution method: hanging

(3) Death penalty viewed from the human-rights theory -> 4 of the last

2. The retention of and abolition of a death penalty

(1) Reasons of retention of death penalty

- ① The criminal deterrent of death penalty
- ② Victim feeling
  - Rise of crime victim's right theory since the '1990s.
  - The start in '2009 of a new jury system in Japan: participation of citizens in the court as a judge.
- ③ Support of majority opinion of the nations

(2) Basis of an argument in favor of the abolition of the death penalty

(1) Misjudgment

- Ashikaga case and Iizuka case.
- The example of UK and U.S.

(2) The international trend of the abolition of death penalty

(3) Death penalty viewed from human rights theory

3. Death penalty from a viewpoint of the an international human rights law

(1) The trend of the United Nations and Europe

- ① The United Nations and the International Covenants on Human Rights
  - second optional protocol" (1989) = Abolition of Death Penalty Treaty
- ② European Convention of Human Rights and the Council of Europe
  - The 6. (1982), and the 13. protocol (2002)
  - The 13th protocol (2005 effectuation) abolishes all death penalties.
  - Warning (2005) of deprivation of status of the observer of Japan
- ③ EU
  - "EU policy guideline to the third countries about abolition of death penalty" (1998)
  - Article 2 EU Charter of Fundamental Rights: right to life and prohibition

of death penalty.

- "Anxiety" to death penalty execution in Japan

(2) The international trend of the abolition of capital punishment

- Increasing abolitionist countries since 1990.
- abolitionist countries 135, retentionist countries 62 in 2008.

(3) It is especially a death penalty of East Asia.

- in China 1718 execution in 2008.
- in South Korea, the execution has been suspended from 1997.
- Japan as the barbarous country of death penalty execution
- Necessity to obey the public opinion not in Japan, but in the World.

4. The abolition of capital punishment viewed from the human-rights theory

- Death penalty cuts off "the right to live."
- Death penalty erases "human dignity."
- The State als a killer by execution of death penalty.
- Death penalty in itself is considered as cruel punishment.

\*Changing death penalty to be unconstitutional because of the changing of national consciousness?