# Taiwan judicial workers' training

台灣司法從業人員之培訓計畫 ICCPR and judicial practice in France 公民與政治權利國際公約暨法國司法實踐之情況 Yves Charpenel

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# European standards of human rights

- The Council of Europe COE 歐洲理事會
- Was established in 1949 to promote pluralist democracy, human rights and rule of law
- 成立於一九四九年,其宗旨在於促進多元民主、人權與法治。
- 47 countries, 800 millions people
- 其成員涵蓋四十七個國家, 合計達八億人口。



#### 歐洲人權標準

- The Convention for the protection of human rights and fundamental freedoms ECHR
- 歐洲保障人權和基本自由公約,亦即"歐洲人權公約"。
- Adopted in 1950 於一九五〇年正式通過。
- Civil and political rights, articles 1-18
- 有關公民與政治之權利,規範於公約內第1-18條條文。
- Additional rights, articles 19-51
- 有關附加權利,則見諸於第19-51條條文。

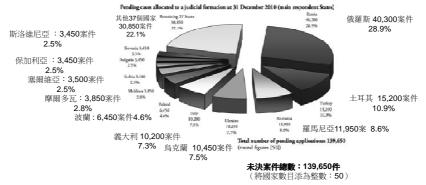
# European standards of human rights



#### 歐洲人權標準

- The European Court of human rights (EC)
- 歐洲人權法院

至二〇一〇年十二月三十一日止,提交歐洲人權法院,未決案件之分佈情況(主要被告國家):



#### European standards of human rights

- 4 criteria 歐洲人權法院受理案件的四項要件
- 1 non anonymous petitioner must bring the case within 6 months
- 非匿名申訴者,必須於內國法院最終審判作成後六個月內,向歐洲人 權法院提出申訴。
- 2 violation of a guarantee of a right set forth in ECHR
- 申訴理由必須違反歐洲人權公約所保障的權利。
- 3 a victim directly persecuted
- 申訴者必須是直接的被害人。
- 4- a new petition
- 申訴必須是新案件,其理由不得與己申訴之案件重覆。

歐洲人權標準

- The **committee of ministers** to ensure payments
- 歐洲委員會之部長理事會,任務之一在於:擔保由歐洲人權法院判定, 且撥交予申訴原告之賠償金之給付。
- Special committees 特別理事會
- Such as the CPT: European committee for the prevention of torture and inhuman or degrading treatment or punishment
- 例如:歐洲防止酷刑及不人道或有辱人格的待遇或處罰理事會
- Visits 探視羈押機構
- Reports 製作報告以提供建議給相關國家
- Standards 針對受羈押者所遭受之待遇,出版歐洲防止酷刑及不 人道或有辱人格的待遇或處罰理事會所認定之標準。

# European standards of human rights

- The European Union
- 歐明
- 27 countries 501 millions people
- 其成員涵蓋二十七個國家,合計達五億一百萬人口。



歐洲人權標準

- The European Court of justice 歐洲法院
- In Luxembourg 位於盧森堡



# European standards of human rights

- OSCE 歐洲安全暨合作組織:
  - Dedicated to the military security but including the human rights protection
  - 主要致力於軍事安全,但也包括人權保護。
  - Helsinki final act 赫爾辛基最終協議
  - Vienna mechanism 維也納機制
  - Moscow mechanism 莫斯科機制

## The French judicial practice

法國司法實踐之情況

• The supreme judicial court 最高法院



## The french judicial practice

法國司法實踐之情況

- The influence of European convention
- 受到"歐洲人權公約"的影響
- Primacy over French national laws
- "歐洲人權公約"相對於法國國內法之優位性
- The role of prosecutor office
- 檢察官之職責
- 23 violations in 2011
- 於二〇一一年,共有二十三件違反歐洲人權公約,侵害人權之案件。

#### The french judicial practice

法國司法實踐之情況

- The custody: 羈押法
- In 2011 a new French law on custody was edicted
- 於二〇一一年,法國頒布了一項新的羈押法。
- The national standards that denied the lawyer access to the files in the custody were declared contrary to the European convention (ECHR)
- 在羈押程序中,律師不得調閱卷宗之國家法令規定,被宣告為違反 "歐洲人權公約"。

#### The French judicial practice

法國司法實踐之情況

- The example of the status of the prosecution
- 以檢察官之地位為例:
- 2 decisions of the EC in 1998 and 2000 stated that the conclusions of the prosecutor must be communicated to all parties
- 根據歐洲人權法院於一九九八年和二〇〇〇年所作的二項判決,檢察 官所作之處分(起訴書或不起訴處分書)應送達所有的利害關係人。
- The opinion of the rapporteur could no more be communicated to the prosecutor
- 受命法官之法律意見,不再送達檢察官。
- The prosecutor could no longer take part to the preparatory conference or to the deliberation
- 檢察官不再參與預審會議或評議會

#### The French judicial practice

法國司法實踐之情況

- The constitutional monitoring:憲法監督
- A constitutional reform on July 2008 gave the right to any person who is involved in legal proceeding before a court to argue that a statutory provision infringes rights and freedoms guaranteed by the Constitution
- 於二〇〇八年七月通過的憲法改革,賦予任何涉訟當事人,有權爭執法令條文侵犯憲法所保障的基本權利與自由。
- The priority preliminary ruling on the issue of constitutionality QPC
- 針對合憲性的先決問題作出判決

#### The right to life in France

生存權在法國

- History 歴史背景
- After the Terror death penalty was abolished in 1795
- 法國在恐怖統治時期結束後,於一七九五年廢除死刑。
- Capital punishment was reintroduced by Napoleon in 1810: « every one sentenced to death will be beheaded »
- 拿破崙於一八一〇年,重新恢復死刑,規定"每位被判處死刑者將被 斬首"。
- a bill of 9 October 1981 abolished the death penalty
- 於一九八一年十月九日通過之法案廢除死刑

## The right to life in France

生存權在法國

- The new law marked a new step for the French legislation, allowing new commitments to promote human dignity:
- 此項廢除死刑之新法案,讓法國在立法的道路上,邁出新的一步,俾利新 的承諾得以提升人性尊嚴。
- Second optional protocol of ICCPR
- 根據公民政治權利國際公約中的第二次選擇議定書
- European convention article 2 基於歐洲人權公約之第二條條文
- Protocol n°6 to the convention for the protection of human rights 歐洲人權公約之第六號議定書,規範對人權的保障。
- Protocol n°13 of the same convention, abolishing death penalty even in time of war 同樣見諸於歐洲人權公約,其中第十三號議定書規定完全廢除死刑,甚至包括戰爭時期。

#### The right to life in France

生存權在法國

- The constitutional level: 在憲法的層次上
- On February 2007 the French Parliament adopted a bill amending the constitution :
- 法國議會於二〇〇七年二月通過一項憲法修正案:
- « no-one shall be sentenced to death »
- 主張"沒有人應當被判處死刑"。
- Now France is allowed to ratify the second Optional protocol of the ICCPR
- 現在, 法國於是能夠批准公民政治權利國際公約中的第二次選擇議定 書。

#### The right to life in France

生存權在法國

- Consequences on public opinion
- 廢除死刑法案的通過,對社會輿論的影響。
- Between 1978 and 2003 French public opinion has reversed his conviction:
- 介於一九七八年至二〇〇三年間,法國社會輿論,對廢除死刑的看法 大逆轉:
- In 1978 58% were opposed to the abolition
- 於一九七八年,有58%的民眾對於廢除死刑,持反對意見。
- In 2003 only 42% wanted his recovery while 58% favored the abolition
- 到了二OO三年,只有42%的民眾希望恢復死刑,然而58%的民眾卻贊成廢除死刑。

#### The right to life in France

生存權在法國

- Consequences on international cooperation
- 廢除死刑法案的通過,對於國際合作之影響。
- French law forbids the extradition of any individual to a country where they might risk the death penalty
- 法國法律禁止將任何人引渡至可能對其判處死刑的國家
- Unless formal and written commitment from highest authorities of the requesting State not to apply the death penalty in the case covered by the request, no mutual legal assistance is possible.
- 除非請求引渡國家之政府最高層級,出具正式且書面承諾,保證不判處 死刑,否則司法互助毫無可能。

# Conclusion

#### 結論

- « happiness and unhapiness are only from ourselves »
- Mengzi
- 誠如孟子所云: 「禍福無不自己求之者。 」
- « justice is always a fight »
- Heraclite
- 古希臘哲學家赫拉克利特也說道: 「正義是永不止息的戰鬥。」