RESEARCH ARTICLE

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The problems of taking back the power of judicial review for death sentences by the Supreme Court of China and the solutions related

Abstract It is of great significance for the Supreme Court of China (SCC) to take back the power of having judicial review for death sentences. For that purpose, first, we have to amend the procedures for judicial review for death sentences, including precisely defining the responsibility of the SCC to review death sentences, determining appropriate modes of review, prescribing the time limit of review, allowing the participation of defense lawyers and prosecutors, etc. Second, we must also amend the appellate procedures for capital cases, including holding hearings, comprehensive trial of key cases, and adjusting the time limit for the second instance. Third, we must improve relative systems that can directly affect the trial quality of capital cases, including the improvement of evidentiary rules, the reform of judicial committees, and the forbiddance to change an original sentence into a death sentence.

Keywords Supreme Court of China, judicial review on death sentences, amend the procedures

摘 要 最高人民法院收回死刑复核权意义重大。为此,必须完善如下程序和制度: 第一、死刑复核程序, 包括准确界定最高法院复核责任, 确定适当的复核审的审理方式,限定复核时间, 允许辩护律师与检察官参加复核程序等。第二、必须完善死刑案件二审程序, 包括实行开庭审理及有重点的全面审理方式, 同时应当适当调整二审的审理期限。第三、直接影响死刑案件质量的相关制度, 包括从多方面完善证据规则,改革审判委员会制度以及禁止再审改判死刑等。

关键词 最高法院, 死刑复核, 程序完善

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Taking back the power of judicial review for death sentences by the Supreme Court constitutes one of the most important actions to improve criminal rule of law of China in the process of the construction of rule of law. It is of great significance to promote the trial quality of capital cases, to control its quantity and to reach the unification of rule by law. Although some scholars regard it as the inner requirement of Criminal Procedure Law, it is not a reform but a restatement, it’s still valuable, because it converts the power allocation and operation modes in the past decades, and consequently brings significant reforms in death penalty and its implementation. During this conversion, problems may arise not only from the shortage of the resources (which can be overcome), but also from the operation, or even from some political and social risks. To facilitate the withdrawal of the power of judicial review for death sentences and to fulfill its purpose, we should analyze these barriers and risks, and propose the solutions according to the current limited conditions.

## 1 Main problems in taking back the power of judicial review for death sentences

The author holds that the problems of taking back the power of judicial review for death sentences by the Supreme Court are mainly displayed in the following four aspects:

### 1.1 Political risk

The Supreme Court intends to reduce the quantity and enhance the quality of capital cases by taking back the power of judicial review of death sentences, which is in accordance with the policy of “sentencing or executing death penalty less and more carefully.” This is not only complied the international trend and the consistent policy of China on the death penalty, but also is in line with the goal of building “a harmonious society” in China. However, sharp reduction of the capital cases still faces political, social and cultural barriers at present. The conception of “the killer to die” is deeply rooted in the Chinese people’s mind. Furthermore, our society is currently in a process of transition. Maintaining stability is a top priority of the government who pays great attention to public order. The court will be under great pressure if limited application of death penalty can not meet the need of victims and not be complied with the local Party Committee and government’s requirement of stability. What’s more, the policy of “sentencing or executing death penalty less and more carefully” can hardly be realized, because of the limitation of independence and authority,