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论我国刑法的人权保障机能

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摘要: 我国刑法通过明文规定罪刑法定等基本原则和其他定罪量刑原则以及规定犯罪与刑罚的一系列条款, 较好地体现了人权保障机能, 但还存在一些缺陷, 主要是: 人权保障机能在我国刑法中的地位还不够突出; 死刑条款较多, 与现代刑法应有的人权保障机能之要求尚存较大差距; 刑法的若干人权保障法条存虚置现象。在人权入宪的新形势下, 为了强化我国刑法的人权保障机能, 应当对刑法总则中有关内容进行修改, 增加人权保障内容; 对刑法分则有关内容进行修改, 逐步削减死刑条款; 对刑法的人权保障机能采取刑法之外的综合补强措施, 包括推进刑法宪法化, 全面推进依法治国, 加强程序保障及调整刑事政策等。

关键字: 刑法; 人权保障机能; 刑法宪法化

On function of safeguarding human right in China's criminal la

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Abstract: China's criminal law's function of safeguarding human right has been well reflected since the Code endorses "no crime or punishment without law" principle, proportion principle and series of other provisions. However, there still exist some demerits on this aspect, mainly including :the status of function of safeguarding human right is not as high as expected in criminal law; there are too much articles eligible for death penalty; some human right safeguarding articles in criminal law do not work in practice. Under the new background of endorsing human right provisions in the Constitution and to strengthen criminal law's function of safeguarding human right, General Provisions should be revised by adding provisions on safeguarding human rights and Specific Provisions also be revised by reducing death penalty articles. Besides, comprehensive measures beyond criminal law should be adopted such as promoting constitutionalisation of criminal law and rule of law fully, strengthening procedural safeguards as well as adjusting criminal policies.

KeyWords: criminal law; function of safeguarding human right; constitutionalisation of criminal law