

# Taiwan Constitutional Court

## Press Release On the Adultery Case

The Constitutional Court is to hear oral arguments in consolidated petitions of Huei-Tai Case No. 12664 filed by the Judge of Taiwan Miaoli District Court et al.

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The Constitutional Court is to hear oral arguments from 9 to 12 a.m., March 31, 2020 on the constitutionality of criminal adultery law case. The issues outlined by the Court are as follows:

A. On Article 239 of the Criminal Code

1. What are the purposes of Article 239 of the Criminal Code, which punishes adultery? What constitutional rights or legal interests is the adultery law intended to protect? What constitutional rights does the adultery law restrict? Which standard of review shall the Court apply to review the adultery law?
2. Does criminalizing adultery contribute to the purposes of Article 239 of the Criminal Code? How is criminalizing adultery related to fulfillment of the purposes of Article 239 of the Criminal Code?
3. Should J.Y. Interpretation No. 554 (2002) be overturned?

B. On the Proviso of Article 239 of the Code of Criminal Procedure

1. What are the purposes of the Proviso of Article 239 of the Code of Criminal Procedure, which provides that “ if the offense is one specified in Article 239 of the Criminal Code, the withdrawal of a complaint against a spouse shall not be considered to be a withdrawal of a complaint against the other adulterer”(hereinafter “Proviso”)? What constitutional rights or legal interests is the Proviso intended to protect? What constitutional rights does the Proviso restrict? Which standard of

review shall the Court apply to review the Proviso?

2. Does the means the Proviso adopts contribute to its legislative purposes? How is the means the Proviso adopts related to the fulfillment of its purposes?

On top of notifying the petitioners to appear before the Court for oral arguments, the Court requested the Ministry of Justice, and the Criminal Department of the Judicial Yuan to appear before the Court. The Court also invited Professor Chang, Wen-Chen (張文貞教授), Professor Wang, Huang-Yu (王皇玉教授), Professor Li, Nigel N. T. (李念祖教授), Professor Tsai, Sheng-Wei (蔡聖偉教授), Associate Professor Hsueh, Chih-Jen (薛智仁副教授) and Associate Professor Huang, Shih-Hsuan (黃士軒副教授) to give their professional opinions. The Court also appointed retired Supreme Court Judge Hsu, Hsing-Hui (前最高法院法官許幸惠) and former Executive Director of The Garden of Hope Foundation Chi, Hui-Jung (前勵馨基金會執行長紀惠容) as *amici curiae*.