

Leading Cases of the Taiwan Constitutional Court

Leading Cases of the Taiwan Constitutional Court

Volume Three

Judicial Yuan

Copyright © 2020 by the Judicial Yuan

All rights reserved

Printed in Taiwan

ISBN 978-986-5454-64-7

Table of Contents

Preface to Volume Three	ix
I. Introduction	1
II. Leading Cases	
<i>1. Legislature</i>	
No. 721 (Election of Party-list Proportional Representatives Case)	9
No. 325 (The Parliamentary Power of Inquiry Case)	17
No. 585 (Scope of Legislative Authority Case)	25
No. 461 (Duty of the Chief of General Staff to Be Present and Answer Questions in Legislative Committees Case)	65
No. 435 (Speech Immunity of Legislators Case)	71
No. 632 (The Exercise of Constitutional Powers and the Duty of Loyal Cooperation of Constitutional Organs Case)	75
No. 329 (Treaties Subject to the Parliamentary Deliberation of the Legislative Yuan Case)	85
<i>2. Executive</i>	
No. 627 (Presidential Immunity and Secret Privilege Case)	91
No. 419 (Vice President Concurrently Assuming Office of Premier Case)	111
No. 520 (Withholding of the Fourth Nuclear Power Plant Budget Case)	147
No. 613 (Legislative Authority over Executive Personnel Case)	163

3. Judiciary

No. 530 (Administrative Supervision of the Supreme Judicial Institution Case)	183
No. 216 (Judicial Review of Administrative Ordinances Case)	193
No. 601 (Deletion of the Budget Appropriated as a Specialized Payment for the Justices Case)	197
No. 185 (Remedies against Judgments that Rely upon Precedents Declared Unconstitutional Case)	221
No. 177 (Permissibility of Retrial When a Relevant Provision of Law Not Applied Affects the Judgment Case)	225
No. 741 (Scope of Original Cases Eligible for Extraordinary Remedies under Interpretations Declaring Laws Unconstitutional but Valid for a Prescribed Period of Time Case)	231
No. 599 (Injunction against Mandatory Fingerprinting for Identity Cards Case)	239
No. 328 (The Boundaries of National Territory Case)	247

4. Local Governments

No. 553 (Judicial Review and the Local Government Act Case)	249
No. 527 (Petition for Interpretation of the Local Government Act Case)	259

Appendix

Constitution	271
Additional Articles of the Constitution	307
Judicial Yuan Organization Act (Excerpt)	319
Constitutional Court Procedure Act (1993)	323
Justices of the Constitutional Court	333
Complete Lists of J.Y. Interpretations	381
Translators and English Editor of the Leading Cases	383

Index

Subject Index	387
Case Index	389

Preface to Volume Three

In August 2018, we published Volume One of the Leading Cases of the Taiwan Constitutional Court (“TCC”) to celebrate our court’s seventieth anniversary. Volume One selected twenty important cases regarding the democratization of Taiwan, separation of powers and protection of individual rights rendered during the same seventy-year period. We then subsequently published Volume Two in November of the next year, featuring an additional twenty-eight leading cases on individual rights. To complete this publication project, we now present to you Volume Three, which contains twenty-one leading cases concerning separation of powers issues. Altogether, these three volumes contain sixty-nine leading cases out of the total of 767 J.Y. Interpretations as of August 2018. We hope that the publication of these leading cases may facilitate the interested readers’ understanding of the framework and performance of our Court, as well as serve to honor the contributions of our predecessors on the Court. With publication of Volume Three, we now formally conclude this Leading Cases project on time as planned. We expect that the future TCC will initiate a new project to publish another volume of the leading cases rendered in the eighth decade of the TCC, *i.e.*, from 2019-2028, and then continue to do so every ten years in the future.

My colleague, Justice Jau-Yuan HWANG, did an excellent job in selecting the twenty-one leading cases and ensuring their translation for publication. I am grateful for his contribution. Professor Charles WHARTON and Ms. Szu-Chen KUO assisted in editing the English translation and provided numerous valuable comments on the merits. Without their input, the quality of this volume would certainly be lessened. Under the guidance of Director Chen-Chou HSU, the entire administrative staff, especially Ms. Mei-Hui WANG, made every effort to publish this high-quality volume. I must offer my deep appreciation to all of them here.

We are proud to share our work with the English-speaking world and remain humble in welcoming comments and responses from the global community of constitutional courts and scholars.



Tzong-Li HSU
Chief Justice of the Taiwan Constitutional Court &
President of the Judicial Yuan

November 2020