

Leading Cases of the Taiwan Constitutional Court

Leading Cases of the Taiwan Constitutional Court

Volume One

Judicial Yuan

Copyright © 2018 by the Judicial Yuan
All rights reserved
Printed in Taiwan
ISBN 978-986-05-6673-4

Table of Contents

Preface	ix
I. Introduction	1
II. Leading Cases	
<i>1. Democratization</i>	
No. 261 (Terms of Office of the First Congress Members Case)	9
<i>2. Limits on the Power to Amend the Constitution</i>	
No. 499 (Unconstitutional Constitutional Amendments Case)	15
<i>3. The Power to Introduce Statutory Bills to the Legislative Yuan</i>	
No. 3 (The Control Yuan's Power to Introduce Statutory Bills Case)	43
No. 175 (The Judicial Yuan's Power to Introduce Statutory Bills Case)	47
<i>4. Judicial Independence</i>	
No. 86 (Separation of the Judicial and the Prosecutorial Institutions Case)	51
<i>5. Jurisdiction of the Constitutional Court</i>	
No. 2 (Government-Petitioned Uniform Interpretation Case)	53
No. 371 (Judges' Petition for Constitutional Review of Statutes Case)	55
<i>6. Gender Equality</i>	
No. 365 (Fathers' Preferred Parental Rights Case)	59
No. 728 (Qualifications for Successors of Ancestor Worship Guilds Case)	63

7. Freedom of Assembly	
No. 445 (Prior Restraint on the Freedom of Assembly Case)	69
8. Free Speech	
No. 744 (Prior Restraint on Commercial Speech Case)	103
9. Freedom of Secrecy of Correspondence	
No. 631 (Issuance of Communications Surveillance Warrants Case)	111
10. Right to Property	
No. 400 (Public Easements on and Taking of Privately-Owned Existing Roads Case)	121
No. 440 (Taking Without Compensation of the Underground Strata of Private Lands Case)	127
11. Right to Work	
No. 584 (Permanent Disqualification of Taxi Drivers Case)	131
No. 749 (Temporary Disqualification of Taxi Drivers Case)	139
12. Right to Judicial Remedy	
No. 736 (Public School Teachers' Right to Judicial Remedy Against Infringements by Schools Case)	151
No. 752 (A Defendant's Right to Appeal a Higher Court Guilty Decision Reversing a Lower Court Not-Guilty Decision Case)	159
13. Unenumerated Constitutional Rights	
No. 603 (Mandatory Fingerprinting for Identity Cards Case)	169
No. 748 (Same-Sex Marriage Case)	187

Appendix

Constitution	203
Additional Articles of the Constitution	239
Judicial Yuan Organization Act (Excerpt)	251
Constitutional Court Procedure Act	255
Justices of the Constitutional Court	267
Complete Lists of J.Y. Interpretations	313
Translators and Editors of the Leading Cases	315

Index

Subject Index	319
Case Index	323

Preface

The year 2018 marks the seventieth anniversary of the Taiwan Constitutional Court (“TCC”). In September 1948, ten Grand Justices held their first meeting of the “Council of Grand Justices,” which was the former English title of the TCC. At that time, it was the first constitutional court in Asia. Seven decades later, it has developed into a dynamic and active court, exercising the power of constitutional review, among others. To celebrate this remarkable milestone, we have selected twenty leading cases and brought together their English translations in this volume. Along these lines, we expect to publish additional volumes on the leading cases of the TCC in the future.

My colleagues, Justice Chang-fa LO, Justice Dennis Te-Chung TANG, Justice Ju-i Ming HUANG, and Justice Jau-Yuan HWANG, worked together as an excellent team in setting up the project framework, selecting the cases, and inviting the translators’ participation. I am grateful for their contributions. Professor Edmund RYDEN, 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 Judge and Director Pi-Fang WANG, the entire administrative staff, especially Ms. Mei-Hui WANG and Ms. Li-Chun LAI, made every effort to ensure that this volume was published on time. 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

August 2018