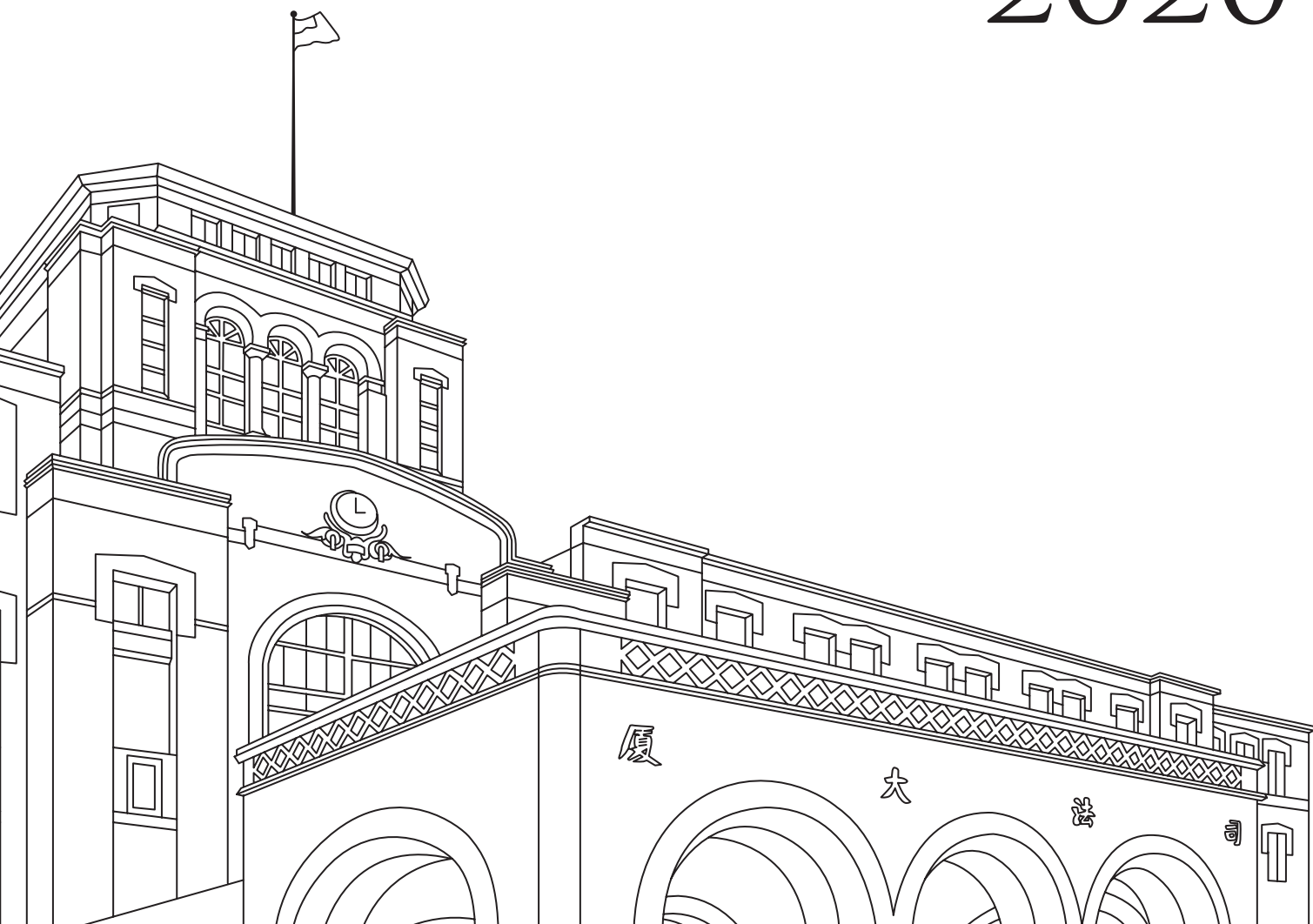




Taiwan Constitutional Court  
Annual Report

2020



**Taiwan Constitutional Court Annual Report 2020**

Taiwan Constitutional Court  
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## Foreword by Chief Justice

The annual report of 2020 is our first yearly review published by the Taiwan Constitutional Court (TCC). It presents the key decisions of the year, the annual conference, and our international exchanges. I am thankful to all Justices for these fruitful results, and the effort by Justice Jau-Yuan HWANG on supervising the publication of this report. All Justices and I firmly believe that justice in a diverse and democratic society is underpinned by collaborative debates and public participation. Therefore, it is the TCC's commitment to keep the public's faith in the Constitution, and to ensure the safeguards bestowed by the Constitution glow in every corner of the State.

Last November, we held the Open House Judicial Yuan event, which allowed the public to access to the TCC's Courtroom and Deliberation Room for the first time in a century since completion of the construction of this historical building. This event should facilitate public understanding of the TCC and the Judicial Yuan.

In January 2022, the newly revised Constitutional Court Procedure Act will enter into force. This new Act will allow the TCC to review the constitutionality of final court decisions, along with the existing jurisdictions on abstract review. This new Act also includes more comprehensive and detailed provisions on the procedures of the TCC, such as *Amicus Curiae*. It is my sincere hope that the TCC will be able to further expand its institutional capacity and fulfil its role as the guardian of Constitution for the benefit of the people and the State.



Tzong-Li HSU

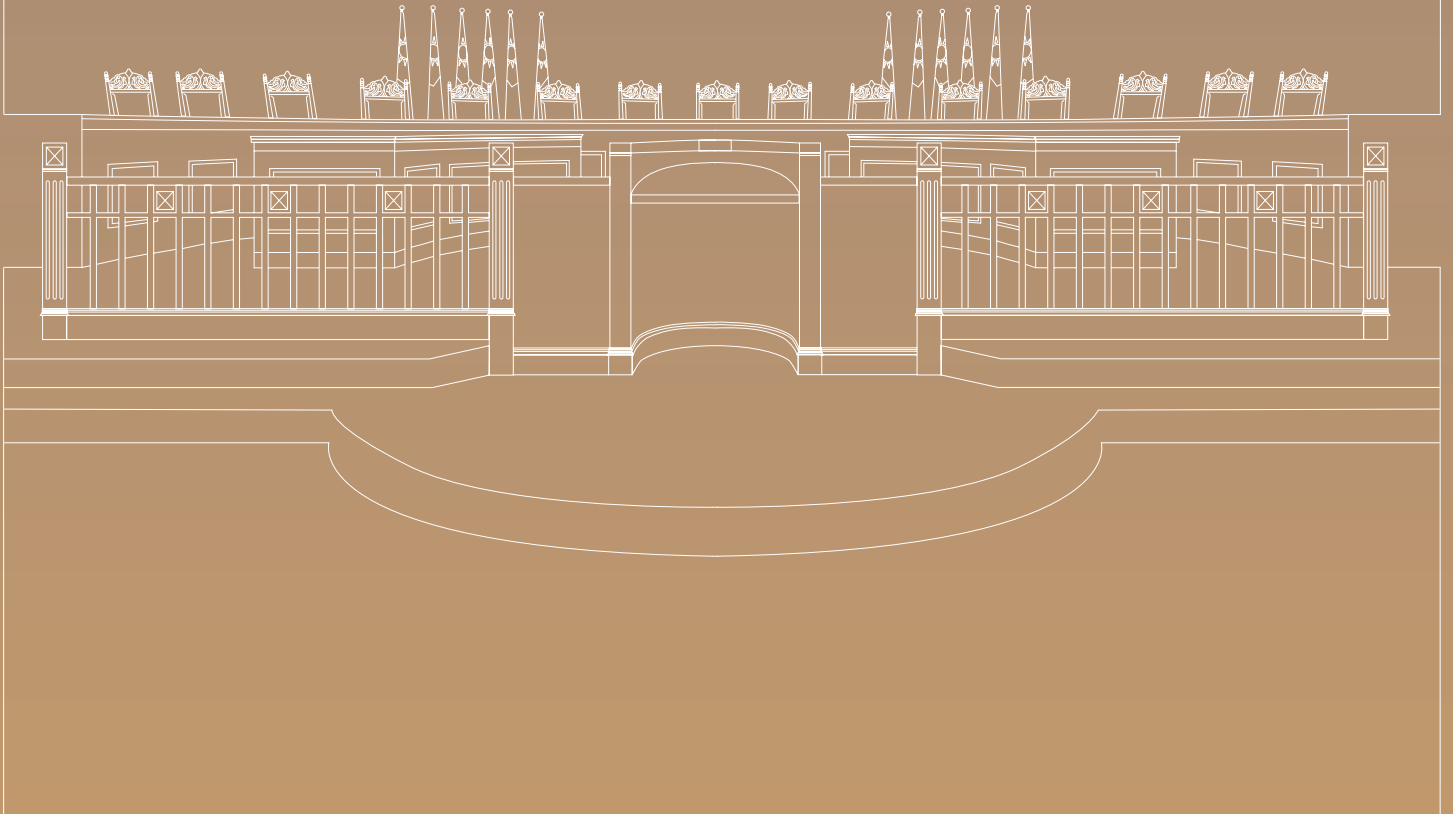
Chief Justice of the Taiwan Constitutional Court  
& President of the Judicial Yuan

September 2021



# 1

## About the Court



## 1.1 The TCC in 2020

Despite the wide-spreading COVID-19 pandemic in 2020, the Taiwan Constitutional Court (TCC) was able to operate as usual, thanks to Taiwan's splendid success of safeguarding the public health without lockdowns. Fortunate enough, the TCC did not have to switch to the module of videoconference, which was conducted by nearly all other Constitutional Courts or Supreme Courts around the world. Through the year, the TCC still managed to hold three oral arguments and one public preparatory hearing in its Courtroom, all of which were open to the public.

## 1.2 Appointment and Term of Office

The TCC is the supreme competent authority to interpret the Constitution in Taiwan. Its organization and powers were expressly provided for in the Constitution of 1947, which was lastly amended by Article 5 of the Additional Articles of 2005. The TCC is entrusted with the powers to render constitutional interpretations, to render uniform interpretation of laws and regulations, to declare dissolution of unconstitutional political parties, and to adjudicate the impeachment trial of the President or the Vice President. All of the Justices of the Constitutional Court (including the President and the Vice President of the Judicial Yuan) are nominated and appointed by the President of Taiwan, with the consent of the Legislative Yuan (Congress). Since October 2003, the term of office for each Justice has been reduced from nine to eight years, except for the President and the Vice President of the Judicial Yuan, whose terms of office are not guaranteed by the Constitution. The Justices may not be re-appointed immediately at the end of their respective terms of office.

The Justices are considered the most prestigious office among Taiwan's judiciary. The qualifications of the Justices are stipulated in Article 4 of the Judicial Yuan Organization Act. To be appointed as Justice, one must meet one of the following qualifications: having served as a judge or prosecutor for at least fifteen years with outstanding performance, having actually practiced as a licensed attorney at law for at least twenty-five years with outstanding performance, having been a full professor of law teaching the core subjects of law for at least twelve years and with specialized publications, having served as a Judge in an international court, or having worked as a public law or comparative law researcher in an academic institution with authoritative professional publications, or having been

devoted to study of law while having political experiences with a distinguished reputation. To assure diversity, the said Article 4 also limits the number of Justices nominated in any of the said qualifications shall not exceed one-third of the total number.

Among the fifteen incumbent Justices, Justices Horng-Shya HUANG, Chen-Huan WU, Ming-Cheng TSAI and Jiun-Yi LIN took their office on October 1, 2015 and will end their office on September 30, 2023. The President of the Judicial Yuan (also the Chief Justice) Tzong-Li HSU and the Vice President (also a Justice) Jeong-Duen TSAI were appointed on November 1, 2016, whose terms are not guaranteed by Constitution. Justice Chih-Hsiung HSU, Chong-Wen CHANG, Jui-Ming HUANG, Sheng-Lin JAN and Jau-Yuan HWANG were appointed on the same date of November 1, 2016, together with the President and Vice President of the Judicial Yuan. These seven Justices will retire on October 31, 2024. Justices Ming-Yan SHIEH, Tai-Lang LU, Hui-Chin YANG and Tzung-Jen TSAI started their terms of office on October 1, 2019 and will retire on September 30, 2027.



## 1.3 Justices of the Taiwan Constitutional Court



### **Tzong-Li HSU**

Chief Justice & President of Judicial Yuan  
Inauguration Day: Nov. 1, 2016

Year of Birth: 1956

#### **Education**

Dr. iur., Georg-August Universität  
Göttingen, Germany  
LL.M., National Taiwan University



## **Professional History**

Justice, Judicial Yuan (2003-2011)

Dean, College of Law, National Taiwan University (2002-2003)

Commissioner, Fair Trade Commission, Executive Yuan, R.O.C. (1995-1998)

President, Taiwan Law Society (2002-2003)

Associate Professor, Department of Law, Fu-Jen Catholic University (1986-1987)

Adjunct Associate Professor, Adjunct Professor, Department of Law, Fu-Jen Catholic University (1987-2011/9/30, 2013/2-Present)

Professor, Department of Law, National Taiwan University (1992-2003, 2013/2-2016/10/31)

Adjunct Professor, Department of Law, National Taiwan University (2003-2013/2, 2016/11/1-Present)

Professor, Department of Law, Fu-Jen Catholic University (2011/10/1-2013/2)

## **Publications**

Verfassungsrechtliche Schranken der Leistungsgesetzgebung im Sozialstaat (1986) (in German)

Revision of the Law Governing the Relationship between the Two Sides of the Taiwan Strait, (co-author) (1989) (in Mandarin)

Law of Local Self-Government (co-author) (1992) (in Mandarin)

Law and Governmental Power (1992) (in Mandarin)

Administrative Law (co-author) (1998) (in Mandarin)

Constitutionalism and Rule of Law (1999) (in Mandarin)

Law and Governmental Power II (2006) (in Mandarin)

A number of articles, conference papers and chapters in books.



## **Jeong-Duen TSAI**

Justice & Vice President of Judicial Yuan  
Inauguration Day: Nov. 1, 2016

Year of Birth: 1953

### **Education**

Ph.D., National Cheng-Chi University  
LL.M., National Chung-Hsing University  
LL.B., National Cheng-Chi University

### **Professional History**

President, The Judges Association of Republic of China (2001/03-2004/01; 2009/02-2011/04)

Justice, Supreme Court (2014/09-2016/10)

Judge and Division Chief, Taiwan High Court (2011/10-2014/09)

Judge and President, Taiwan Hsinchu District Court (2009/12-2011/10)

Judge and President, Taiwan Miaoli District Court (2005/12-2009/12)

Director-General, Department of Clerks for the Constitutional Court, Judicial Yuan (2003/12-2005/12)

Judge, Judge and Division Chief, Taiwan High Court (1994/12-2003/12)

Judge, Taiwan Yunlin, Taoyuan, Taipei, Taiwan Taipei District Court Banqiao Branch Court;

Judge and Division Chief, Taiwan Keelung District Court (1983/07-1994/12)

### **Publications (in Mandarin)**

Code and Practice of Judges Ethics

Judicial Independence and Supervision of Duty

Study on Secured Corporate Bond Trust

Study on Collective Labor Dispute Right



**Horng-Shya HUANG**

Justice

Inauguration Day: Oct. 1, 2015

Year of Birth: 1954

**Education**

LL.B., National Taiwan University

### **Professional History**

Mediator, Civil Division, Taiwan Taipei District Court (2015)

Member, Consultative Panel for Legal and Professional Affairs, Administrative Enforcement Agency, Ministry of Justice (2013-2015)

Adjunct Clinical Professor, College of Law, National Taiwan University (2013-2014)

Committee Member, Sexual Harassment Appeal Review Committee, Ministry of Foreign Affairs (2011-2015)

Member, Panel for State Compensation Cases, Administrative Enforcement Agency, Ministry of Justice (2010-2015)

Mediator, Taiwan High Court (2007-2015)

Board Member, SinoPac Holding (2006-2008)

Director-General, International Federation of Women Lawyers, ROC (2004-2006)

Supervisor, First Securities Investment Trust Co. Ltd. (2001-2005)

Supervisor, National Bar Association of the Republic of China (1993-1996)

Standing Supervisor, Taipei Bar Association (1990-1993)

### **Publications (in Mandarin)**

A number of articles and conference papers, mainly published by Formosa Transnational Law Review & Publications.



## **Chen-Huan WU**

Inauguration Day: Oct. 1, 2015

Year of Birth: 1954

### **Education**

Doctor of Legal Science (SJD), Bond  
University, Australia

LL.M., The American University, USA

B.L and LL.M, National Taipei University

### **Professional History**

Head Prosecutor, The Supreme Prosecutors Office (2015/09)

Political Deputy Minister, The Ministry of Justice (2012/01-2015/09)

Administrative Deputy Minister, The Ministry of Justice (2008/05-2011/12)

Prosecutor, The Supreme Prosecutors Office (2007/04-2008/05)

Chief Prosecutor, The Taiwan Shi-Lin District Prosecutors Office (2002/04-2007/04)

Secretary General, The Ministry of Justice (2000/06-2002/04)

Head Prosecutor, The Taiwan High Prosecutors Office (2000/03-2000/05)

Director, The Department of Legal Affairs of the Ministry of Justice (2000/01-2000/03)

Counselor, The Ministry of Justice (1995/11-1998/01), (1998/09-2000/01)

Prosecutor, The Taiwan High Prosecutors Office (1992/10-1995/11), (1998/01-1998/08)

Prosecutor, The Fukien High Prosecutors Office, Kin-Men Branch (1991/11-1992/10)

Head Prosecutor, The Taichung District Prosecutors Office (1987/12-1991/10)

### **Publications (in Mandarin)**

Recognition and Enforcement of Foreign Arbitral Awards in the Republic of China, The Arbitration Association of the Republic of China, 2005 (Taipei).

Recognition and Enforcement of PRC Arbitral Awards in Hong Kong and Recognition and Enforcement of Hong Kong Arbitral Awards in PRC, 3 CAA (Arbitration Association of the Republic of China) Arbitration Journal, 114 (2004).

Proof of Copyright Infringement in the Republic of China and the United States of America, 33 Journal of Law and Commerce 517 (1997).

There are also some other published books and articles in Chinese or in English.



## **Ming-Cheng TSAI**

Justice

Inauguration Day: Oct. 1, 2015

Year of Birth: 1956

### **Education**

Dr. Jur., Ludwig-Maximilians-University  
of Munich (LMU), Germany

Master of Law, National Taiwan  
University

Bachelor of Law, National Taiwan  
University



### **Professional History**

Dean, College of Law, National Taiwan University (2006/08-2012/07)

Director, Department of Law, College of Law, National Taiwan University (2006/08-2012/07)

Professor, Faculty Exchange Program, Heidelberg University (2012/08-2012/09)

Visiting Scholar, University of Washington (Seattle), United States (2003/07-2004/01)

Professor, National Taiwan University (1997/08-2015/09)

Associate Professor, National Taiwan University (1992/08-1997/07)

Associate Professor, National Chengchi University (1990/02-1992/07)

### **Publications (in Mandarin)**

Patent Law (2015)

Patent Infringement and the Measure of Damages (2009)

Code on the Intellectual Property (2005)

A Study on Property Code (2005)

A Study on the Patent Law (1998)

A Study on the German Copyright Law, Regulations and Decisions (Co-Authors)(1996)

Handbook of Mass Communication Law (Co-editors)(1992)

A number of articles, conference papers and chapters in books.



**Jiun-Yi LIN**

Justice

Inauguration Day: Oct. 1, 2015

Year of Birth: 1957

**Education**

Ph.D., National Cheng-Chi University

LL.M., Fu-Jen Catholic University

LL.B., National Taiwan University

### **Professional History**

Judge and President, Taiwan Shilin District Court (2013-2015)

Director-General, Criminal Department, Judicial Yuan (2009-2013)

Judge, Taiwan High Court (2001-2009), appointed to serve at Supreme Court from 2007 to 2009

Judge and Division Chief, Taiwan Shilin District Court (1998-2001)

Judge, Taiwan Shilin District Court (1995-1998)

Judge, Taiwan Taipei District Court Shilin Branch Court (1991-1995)

### **Publications (in Mandarin)**

Code of Criminal Procedure (I) (19th ed.) (2019)

Code of Criminal Procedure (II) (15th ed.) (2019)

Procedure Justice and Litigation Economy (Case Study on Code of Criminal Procedure) (2000)

Theories and Practices of Hearsay Rule (co-author) (2004)

Feasibility Study on Litigant Principle and Criminal Procedure in Taiwan (1991)

More than one hundred articles of criminal category published in periodicals.



**Chih-Hsiung HSU**

Justice

Inauguration Day: Nov. 1, 2016

Year of Birth: 1953

**Education**

L.L.M., National Taiwan University

L.L.B., National Taiwan University

### **Professional History**

Professor, Center of General Education, National Chiayi University (2010-2016)  
Adjunct Professor/Associate Professor, College of Law, National Taiwan University (1997-Present)  
Chair Professor, Department of Management of Financial and Economic Law, Hsing Kuo Management College (2008-2010)  
Honorary Doctoral Degree, National University of Mongolia (2005)  
Chairman/Assembly Member, National Assembly (2005)  
Chairperson, Referendum Review Commission, Executive Yuan (2004)  
Deputy Chairperson/Member, Panel for Promotion and Protection of Human Right (2002-2004)  
Minister without Portfolio and Minister of Mongolian & Tibetan Affairs, Executive Yuan (2002-2008)  
Minister without Portfolio, Executive Yuan (2001-2002)  
Member, Preparation Committee for the National Judicial Reform Assembly (1999)  
Representative Attending the National Judicial Reform Assembly (1999)  
Member, Executive Committee on the National Judicial Reform Assembly Conclusion (2000)  
Chairman, Taiwan Law Society (1998-1999)  
Director, Department of Public Administration, Tamkang University (1995-1999)  
Professor/Associate Professor/Adjunct Lecturer, Department of Public Administration, Tamkang University (1992-2004)

### **Publications (in Mandarin)**

The 70th Anniversary of the ROC Constitution (eds.)(2017)  
Human Rights (2016)  
The Road to the Constitution of Taiwan (eds.)(2012)  
Constitutional Change (2nd ed., 2010)  
Modern Constitutions (co-author)(4th ed., 2008)  
The Basic Theory of the Constitution (1992)  
A number of journal articles, conference papers and book chapters.



## **Chong-Wen CHANG**

Justice

Inauguration Day: Nov. 1, 2016

Year of Birth: 1955

### **Education**

LL.M., National Chengchi University

LL.B., National Chengchi University

### **Professional History**

President, Chinese Women Judges Association - Taiwan , R.O.C. (2015/2-2017/1)

Deputy Secretary-General, Judicial Yuan (2015/4-2016/10)

Judge and President, Kaohsiung High Administrative Court (2010/11/26-2015/4/19)

Justice, Supreme Administrative Court (2009/1/5-2010/11/25)

Judge and Division Chief, Taipei High Administrative Court (2000/7/1-2009/1/4)

Judge, Taiwan High Court (1995/9/30-2000/6/30)

Judge and Division Chief, Taiwan Taipei District Court (1994/7/20-1995/9/29)

Judge and Division Chief, Taiwan Banqiao District Court (1993/5/28-1994/7/19)



**Jui-Ming HUANG**

Justice

Inauguration Day: Nov. 1, 2016

Year of Birth: 1955

**Education**

L.L.M., National Taiwan University

L.L.B., National Taiwan University



### **Professional History**

Representative Partner, Baker& McKenzie Taipei Office (2009-2016)  
Lawyer, Partner, Baker& McKenzie Taipei Office (1982-2016)  
Trainee Lawyer, Germany, Baker & McKenzie, Frankfurt Office (1985-1987)  
Adjunct Clinical Professor, College of Law, National Taiwan University (2014-2017)  
Adjunct Professor of Law, National Tsing Hua University (2003-2014)  
Adjunct Lecturer of Law, Soochow University (1989-2005)  
Director, Center for Legal Ethics, Judicial Reform Foundation (2006-2016)  
Chairman, Judicial Reform Foundation (2007-2012)  
Director, Judicial Reform Foundation (2000-2012)  
Director, NTU Law Foundation (2013-Present)  
Supervisor, Environmental Jurists Association (2010-2016)  
President, Taiwan Law Association (2005-2006)  
President, Taipei Bar Association (2000-2002)  
Member, Judges Selection Committee, Judicial Yuan (2012-2016)  
Commissioner to the Government Procurement Commission, Executive Yuan (2003- 2009)  
Member, Group for Promoting Human Right Protection, Executive Yuan (2001-2006)

### **Publications (in Mandarin)**

The Cultural Pursuits of a Lawyer (Second Edition, 2016)



## **Sheng-Lin JAN**

Justice

Inauguration Day: Nov. 1, 2016

Year of Birth: 1957

### **Education**

Dr. jur., Goethe University Frankfurt am  
Main, Germany

LL.M., National Taiwan University

LL.B., National Taiwan University

## **Professional History**

Attorney (1981-1992)

Associate Professor, National Taiwan University (1992-1998) Professor, National Taiwan University (1998-2016)

Dean, GIIS, College of Law, National Taiwan University (2004-2006) Distinguished Professor, National Taiwan University (2009/08-2016/10)

Fu Ssu-Nien Memorial Chair Professor, National Taiwan University (2014-2015)

Distinguished Professor and Dean, College of Law, National Taiwan University (2015-2016)

Visiting Scholar, University of Michigan, USA (2007)

Visiting Professor, Tsinghua University, China (2007)

Visiting Professor, Pontifical Lateran University, The Holy Sea (2011)

Visiting Research Fellow, Merton College, Oxford University (2014)

Exchange Professor, Heidelberg University, Germany (2015)

Visiting Professor, Osnabrück University, Germany (2016)

Commissioner, Complaint Review Board for Government Procurement, Public Construction Commission, Executive Yuan (1999-2011; 2013-2016)

Director and Secretary General, Civil Law Research Foundation (2002-)

Commissioner, Consumer Protection Commission, Executive Yuan (2003-2011)

Commissioner, Consumer Protection Committee, Executive Yuan (2012-2016)

Committee Member, Prosecutors' Evaluation Committee, Ministry of Justice (2012-2016)

Convener, Judicial Evaluation Committee, Judicial Yuan (2016)

Committee Member, Ombudsman Committee, Financial Ombudsman Institution (2012-2016)

## **Publications (in Mandarin)**

Essays on Civil Law Jurisprudence and Judgements, Vol. 1-Vol. 7



## **Jau-Yuan HWANG**

Justice

Inauguration Day: Nov. 1, 2016

Year of Birth: 1962

### **Education**

S.J.D. 1995 Harvard Law School, U.S.A.

LL.M. 1991 Harvard Law School, U.S.A.

LL.M. 1989 National Taiwan University

LL.B. 1984 National Taiwan University

### Professional History

Adjunct Professor of Law, National Taiwan University College of Law (2016/11-Present)  
 Professor of Law (2004/08-2016/10), Associate Professor (1996/08-2003/07), Lecturer  
 (1995/08-1996/07), National Taiwan University College of Law  
 Visiting Professor of Law, Kyushu University, Japan (2016/07-09)  
 Vice Dean of the College of Law & Director of Graduate Institute of Interdisciplinary Legal  
 Studies, National Taiwan University (2012/08-2015/07)  
 Member, Central Election Commission of Executive Yuan (2001/06-2007/07)  
 Associate Attorney, Formosa Transnational Attorneys at Law (1988/09-1990/06)

### Publications

2017.04, Evolution of Equality Theories and the Difficulties of Applying the Conception of  
 Substantive Equality in Constitutional Law, In: Chien-Liang Lee (ed.), Constitutional  
 Interpretation: Theory and Practice, vol. 9, Taipei: Academia Sinica, pp. 271–312 (in  
 Mandarin)  
 2016.09. Tzu-Yi Lin, Jiunn-rong Yeh, Jau-Yuan Hwang & Wen-Chen Chang (eds.).  
 Constitutional Law: Separation of Powers, 3rd ed., Taipei: Sharing. (in Mandarin)  
 2016.05. Transitional Justice in the Post-War Taiwan. In: Gunter Schubert (ed.), Handbook  
 of Modern Taiwan Politics and Society, New York, N.Y.: Routledge, pp.169-183. (in  
 English)  
 2012.09. Conflicts between Disparate Impact and Disparate Treatment: Comments on the  
 Decision of Ricci v. DeStefano (2009), Academia Sinica Law Journal 11: 1-63. (in  
 Mandarin)  
 2004.05. Judicial Standards of Review for Restrictions on Constitutional Rights: Comparative  
 Analysis of the U.S. Approach of Categorized Multiple Tests, NTU Law Journal, 33(3):  
 45-148. (in Mandarin)  
 1997.03. Rethinking the Theory of Substantive Limitations on Constitutional Amendments.  
 In: Modern State and Constitutional Law: Essays in Honor of Professor Hong-Hsi Lee,  
 Taipei: Angle, pp. 179-236. (in Mandarin)  
 (about 110 journal articles and book chapters, and 3 edited books published in Mandarin or  
 English, on subjects of constitutional law, comparative constitutional law, judicial review,  
 standards of review, equality, international law, international human rights law, etc.)



## **Ming-Yan SHIEH**

Justice

Inauguration Day: Oct. 1, 2019

Year of Birth: 1957

### **Education**

Ph.D., University of Munich, Germany

LL.M., National Taiwan University

LL.B., National Taiwan University

### **Professional History**

Adjunct Professor, College of Law, National Taiwan University (2019/10-Present)

Professor, College of Law, National Taiwan University (1998-2019)

Associate Professor, College of Law, National Taiwan University (1990-1998)

Dean, College of Law, National Taiwan University (2012-2015)

Jean Monnet Chairs on EU IP Law (2016-2019)

Visiting Scholar of University of Munich (1996-1997)

Visiting Scholar of Columbia University (2007)

Visiting Scholar of Fordham University (2009)

Chairman of Taiwan Law Society (2017-2018)

Chairman of Taiwan Intellectual Property Law Association (2018-2019)

Associate Attorney (1980-1983)

### **Publications (in Mandarin)**

Intellectual Property Rights Law (9th edition, 2019)

New Development of EU Patent, EU Economic Global Governance, Tamkang University  
Publication (June 2017)

A Comparative Study on the Invalidation Procedure of Intellectual Property, Judicial Yuan  
(Nov. 2016)

Technology Transfer and IPR Issues (2005)

Intellectual Property Systems and Practice (2004)

Basic Intellectual Property Legal Theory (2004)

A Study on Basic Issues Concerning Intellectual Property Rights (2002)

(Justice Shieh has published more than ten books and over one hundred articles.)



## **Tai-Lang LU**

Justice

Inauguration Day: Oct. 1, 2019

Year of Birth: 1959

### **Education**

Master of Law, National Chung Hsing  
University

Bachelor of Law, National Chung Hsing  
University



### **Professional History**

Secretary-General, Judicial Yuan (2016-2019)

President, Judges Academy (2013-2016)

President, Judicial Personnel Learning Institute of Judicial Yuan (2011-2013)

Judge and Division Chief, Taiwan High Court (2011)

Judge and President, Taiwan Nantou District Court (2003-2005)

Judge, Taiwan High Court (2001-2003, 2005-2011)

Deputy Director-General, Director-General, Department of Personnel, Judicial Yuan (1998-2001)

Judge, Taiwan Taichung District Court (1993-1998)

Judge, Taiwan Changhua District Court (1992-1993)

Prosecutor, Taiwan Taichung District Prosecutors Office (1987-1992)

### **Publications (in Mandarin)**

Civil Procedure Law Basics I

Civil Procedure Law Basics II

Civil Procedure Law



## **Hui-Chin YANG**

Justice

Inauguration Day: Oct. 1, 2019

Year of Birth: 1960

### **Education**

LL.M., National Chengchi University

LL.B., National Chengchi University

### **Professional History**

Judge and President, Kaohsiung High Administrative Court (2015/8-2019/9)

Judge, Court of the Judiciary, Judicial Yuan (2012/10-2018/8)

Justice, Supreme Administrative Court (2009/9-2015/8)

Judge, Kaohsiung High Administrative Court (2000/7-2009/9, appointed to serve at Supreme Administrative Court from 2005/8 to 2008/8)

Judge and Division Chief, Taiwan Kaohsiung District Court (1996/12-2000/6)

Judge, Taiwan Kaohsiung District Court (1986/12-1996/12)

Revenue Officer, National Taxation Bureau of Taipei, Ministry of Finance (1984/1-1984/9)



## **Tzung-Jen TSAI**

Justice

Inauguration Day: Oct. 1, 2019

Year of Birth: 1965

### **Education**

Dr. jur., Ludwig-Maximilians-University  
of Munich (LMU), Germany

LL.B., National Taiwan University

### **Professional History**

Adjunct Professor of Law, National Taiwan University College of Law (2019/10/01-Present)

Minister of Examination (2016/05/20-2019/09/30)

Professor of Law (2010/08/01-2019/09/30), Associate Professor of Law (2004/08/01-2010/07/31)

### **Publications (in German)**

1996. Die verfassungsrechtliche Umweltschutzpflicht des Staates. Zugleich ein Beitrag zur Umweltschutzklausel des Art. 20 a GG, Berlin: Duncker & Humblot.

2009. (mit Chien-Liang Lee) Die Rezeption und Weiterentwicklung der rechtsstaatlichen Paradigmen in Taiwan. Ein rechtsvergleichender Beitrag zum Gedanken des Gesetzesvorbehalts, in: Werner Heun/Christian Starck/Tzung-jen Tsai (Hrsg.), Rezeption und Paradigmenwechsel im öffentlichen Recht. Viertes deutsch-taiwanesisches Kolloquium vom 7.-8. November 2008 in Taipeh, 2009.07, Baden-Baden: Nomos, S. 37-54.

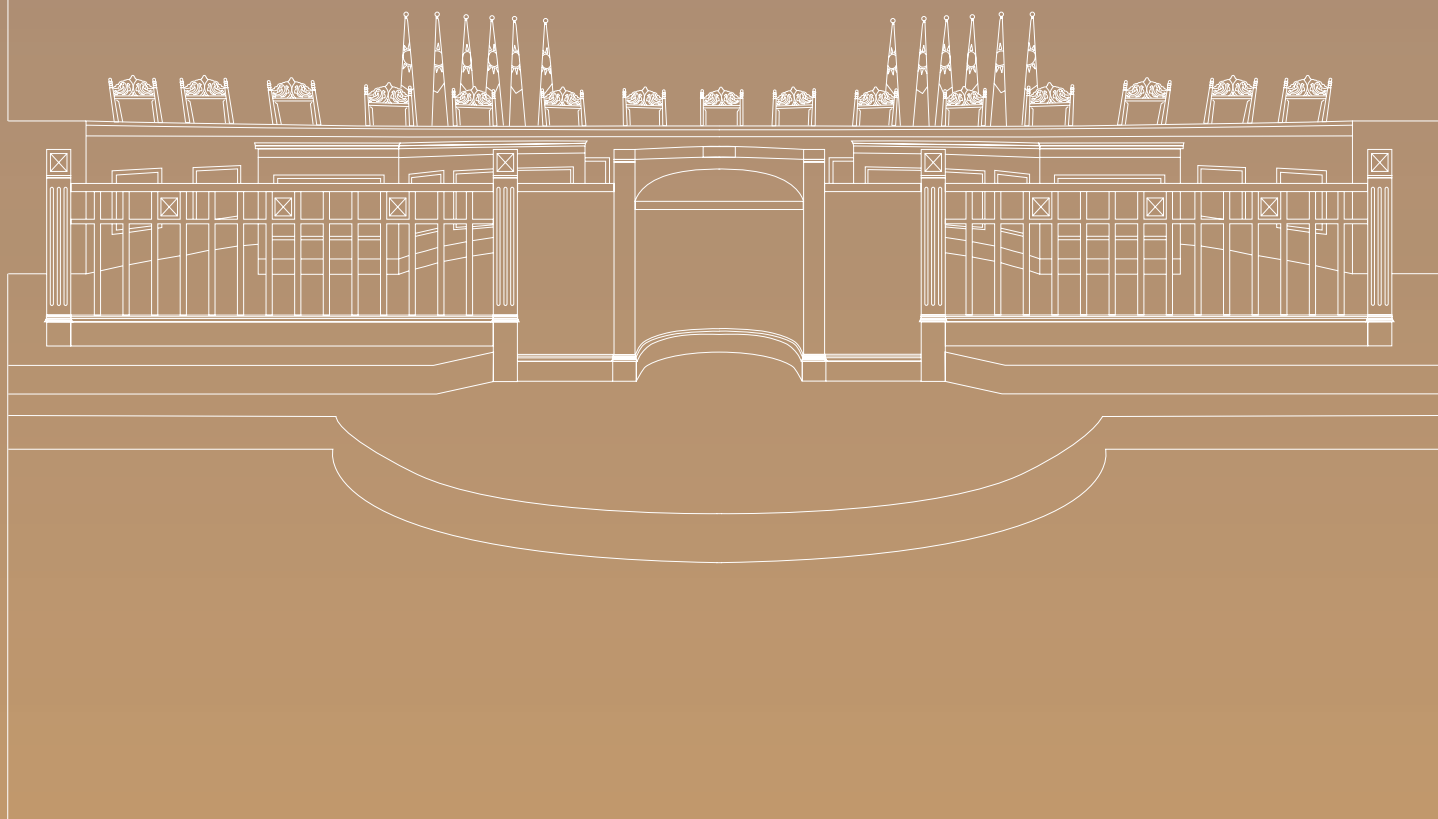
2015. Vom verpflichteten Staat zum verpflichtenden Staat – Zur Wandlung des verwaltungsrechtlichen Staat-Bürger-Verhältnisses, in: Jan Ziekow/Chien-Liang Lee (Hrsg.), Wandlungen im Verhältnis zwischen Bürger und Staat, Berlin: Duncker & Humblot, S. 121-134.

A number of journal articles, conference papers and book chapters.



2

# Decisions



## 2.1 Leading Cases

In 2020, the TCC produced a total of twelve Interpretations (No. 788 to No. 799), while dismissed another 590 petitions. The leading cases of 2020 are as follows:



Signature Book for the Justices' check-in at each deliberation conference



## 2.1.1 Interpretations regarding Criminal Laws

### **(1) J.Y. Interpretation No. 789: Admissibility of the Hearsay Evidence Provided by the Victims of Sexual Offenses Case**

This Interpretation addressed the issues arising from the conflicts between the accused's right to defense and the protection of the victim in the cases of sexual assault offences. The TCC was called upon to decide the constitutionality of Article 17, Paragraph 1 of Sexual Assault Crimes Prevention Act, which allowed the admissibility of the victim's statement made outside of the courtroom if the victim was unable to make a statement due to physical or psychological injury resulted from the sexual assault incident. The TCC upheld the constitutionality of this provision, holding that, for the purpose to mitigate the harm imposed on the victim during the proceedings, it shall be legitimate to allow the admissibility of statement outside of the trial in exceptional cases. The TCC also enumerated measures that could be taken to compensate the compromise of the accused's right to defense, including a pre-trial cross-examination or the mandatory supporting evidences in cases where the statements of the victim being the only evidence. The TCC emphasized these compensatory measures would reinforce the legitimacy of admitting the victim's statements outside the trial in such exceptional circumstances.

### **(2) J.Y. Interpretation No. 790: Punishment of Growing Marijuana Plants Case**

The Justices were called upon to deal with the proportionality of punishment in cases involving marijuana. Article 12, Paragraph 2 of Narcotics Hazard Prevention Act imposed an at least five-year imprisonment on the offenses of growing marijuana plants,

regardless its purpose being for self-consumption or business transactions. The TCC affirmed the legitimacy and the necessity of criminalizing growing marijuana plants. However, the TCC held that, in the cases of small-scale growing for the purpose of self-consumption, the punishment of at least five-year imprisonment was disproportionately harsh, as this disputed provision did not include the possibilities of a probation or a fine as a substitute for imprisonment in such. Therefore, the TCC declared unconstitutional the said provision for violation of the principle of proportionality, while allowing this unconstitutional provision to remain valid for at most one year after the announcement of this Interpretation or until it is revised by the legislature, whichever comes first. If this provision is not revised within the said one-year period, the minimum sentence of such offenses shall be reduced to two-and-half years imprisonment. The courts shall decide an appropriate punishment for the defendant in each pending case accordingly.

### **(3) J.Y. Interpretation No. 791: Adultery Case**

In this decision, the TCC declared unconstitutional the criminal punishment of adultery as provided for in Article 239 of the Criminal Code. The TCC heard the oral argument in its courtroom, which was livestreamed to the public. The TCC rendered its interpretation within two months after the date of oral argument.

In this Interpretation, the TCC overruled one of its precedents, J.Y. Interpretation No. 554 (December 27, 2002), which once found the adultery crime constitutional. Whilst J.Y. Interpretation No. 554 recognized the adultery did involve individual autonomy on sexual conducts, it nevertheless confirmed the purpose of adultery crimes was to protect the marriage and family and therefore legitimate and valid. The TCC in J.Y. Interpretation No. 554 further found the criminal punishment of adultery an appropriate means to

achieve the said purposes and therefore constitutional.

In J.Y. Interpretation No. 791, the TCC first recognized the individual right to sexual autonomy was protected as an unwritten constitutional right under Article 22 of the Constitution. Applying an intermediate scrutiny standard, the TCC cast doubts on whether such purposes of protecting individual marriage and his or her family could be considered important public interests, even though they were legitimate purposes. On the scrutiny of the means, the TCC also questioned the actual effects of preventing adultery by criminal punishments. It further found the investigation and trial procedures of adultery crimes would inevitably invade the privacy of the accused. In conclusion, the TCC held the punishment of imprisonment for no more than one year was a disproportional intrusion on the adulterous parties' right to sexual autonomy. The TCC declared the said Article 239 of Criminal Code unconstitutional and null and void immediately after the announcement of this Interpretation.

Interpretation No. 239 also declared unconstitutional the Proviso of Article 239 of the Criminal Procedures Code. This Proviso provided that the withdrawal of a complaint against a spouse shall not be considered a withdrawal of a complaint against the other adulterer. The TCC found the said Proviso unconstitutional for violating the right to equality on the grounds that such different treatment only effectuated the victim spouse's desire to retaliate against the extramarital third party and did not bear a substantial relation to the purpose. This Proviso was also declared null and void immediately from the date of announcement of this Interpretation.

#### **(4) J.Y. Interpretation No. 792: Sale of Narcotics Case**

Once again, the TCC was asked to adjudicate on the constitutionality of two similar

rules concerning the Narcotics Hazard Prevention Act. These two rules were created by the Supreme Court out of a number of precedents and followed by criminal courts of all levels. These two court-made rules provided that the mere action of purchasing whatever narcotics shall be considered an accomplished action of selling narcotics, even if the purchaser bought the items for self-consumption and did not intend to sell the narcotics to others.

Though these two court-made rules were already overruled by the Supreme Court itself before the Interpretation was made. However, only those court decisions made after the change of these two rules would benefit from such change. For those court decisions rendered before this change were still bound by these two rules with no effective remedies available. Out of this reason, the TCC went on to review the constitutionality of these two court-made rules, in order to provide effective remedies to the petitioners.

The TCC held that these two rules were incompatible with the principle of no punishment without law (*nullum crimen sine lege*) and therefore unconstitutional. The TCC emphasised the essence of the principle of no punishment without law shall be premised on the common understanding of the plain text of law. To the average people, the mere action of purchase has not been considered an accomplished action of sale. Such purchase may be punished by other appropriate provisions but not by this specific provision on the sale of narcotics. On this ground, the TCC found the said two rules unconstitutional.

#### **(5) J.Y. Interpretation No. 796: Mandatory Revocation of Parole Case**

In this decision, the TCC declared unconstitutional the mandatory revocation of parole on the ground that the parolee was sentenced to imprisonment again. In practice,

the convicted defendant may be permitted to pay a fine calculated based upon the length of his or her sentence, if such sentence is less than six months. Therefore, the mandatory revocation of parole, without taking into consideration the length of sentence and other factors, such as a probation, was ruled as too excessive and disproportionate against the purposes of revoking parole. The TCC further mandated the competent authorities in charge of the law enforcement follow the holdings of this Interpretation in determining whether to revoke the parole on a case-by-case basis, before a new provision replacing the current unconstitutional provision comes into force.

**(6) J.Y. Interpretation No. 799: Post-Imprisonment Mandated Therapy of Sexual Offenders Case**

This decision was the third Interpretation in 2020 made based upon an oral argument. In this case, the TCC was called upon to determine the constitutionality of the post-imprisonment mandated therapy after a sex offender has served his or her entire period of sentence. The constitutional issues involved included: (1) Whether the languages of “the risk of recidivism” and “the risk of recidivism has been manifestly reduced” contained in the disputed provisions were too vague and failed to meet the requirements of legal clarity? (2) Whether the indefinite detention for mandated therapy on the ground that the said risk was not significantly reduced infringed on the right to personal liberty? (3) Whether the absence of opportunity to initiate a hearing during the detention violated the due process of law? (4) Whether the assessment procedures of the risk of recidivism violated the right to fair trial? and (5) Whether the disputed provisions violated the principle of non-retroactivity?

The TCC held most of the disputed provisions constitutional, and declared

unconstitutional for violating the due process of law on the ground that the disputed provisions did not provide for the necessary procedural mechanisms for the detainees to initiate a hearing during his or her detention and to be represented by a legal counsel. Furthermore, the TCC held the said procedural provisions failed to satisfy the requirements of the right to legal assistance as applied to the circumstances where the detainees were incompetent in stating his/her opinions due to mental disorders or defects.

On the other side, the TCC held that the languages of both “the risk of recidivism” and “the risk of recidivism has been manifestly reduced” did not violate the principle of legal clarity, and therefore the mandated therapy based upon such requirements did not infringe on the detainees’ right to personal liberty. The TCC further held constitutional the indefinite detention until the risk was significantly reduced without setting a maximum length of detention. However, the TCC also issued a warning to the competent authorities by reminding them such indefinite detention might be considered unconstitutional in some cases where the detainees might suffer too excessive and unbearable burdens beyond the extent of reasonable expectation. On the distinction between the detention for mandated therapy and the imprisonment, the TCC requested there should be clear distinctions between both, but stopped short of declaring unconstitutional the disputed provisions and the existing practices of detaining those sex offenders on a separate floor of the same building for housing the prisoners. On this point, the TCC merely warned the competent authorities that such practices might be considered unconstitutional in the future, if they remain unchanged.





The TCC Conference Room, where deliberation among Justices takes place

## 2.1.2 Interpretations regarding Administrative Laws

### (1) J.Y. Interpretation No. 788: Recycling Fee for the PVC Containers Case

This decision concerns issues regarding the principle of statutory reservation, the principle of legal clarity and the right to equality. The petitioner was obliged to pay the recycling, clearance and disposal fees according to Article 16, Paragraph 1 of Waste Disposal Act and its subsidiary regulation. The petitioner argued that the imposition of the above fees produced a disproportionate outcome that the more contaminating PVC materials used, the less fees charged, due to their calculation formula.

The TCC ruled that the laws in dispute did not violate the principle of statutory reservation. The TCC also found the appearance of “more PVC used, less fees charged” was an incidental consequence rather than a systematic disproportionate impact. Therefore, the said provisions did not infringe on the right to equality.

In addition, the TCC elaborated that the measure—a doubled fee for PVC used in specific items—adopted by the regulation based on Article 16, Paragraph 5 bore a rational relation to the purpose of reducing the use of PVC. Thus, the interference with the right to property and the freedom of business operation as a result of the said provision did not violate the principle of proportionality.



**(2) J.Y. Interpretation No. 794: Tobacco Sponsorship Case**

This is the most recent decision on censorship of commercial speeches, following J.Y. Interpretation Nos. 414, 517, and 744. The petition was filed by a cigarette company who was fined for violation of the ban on promoting the positive image of cigarette, as stipulated in Article 9, Subparagraph 8 of Tobacco Hazards Prevention Act. According to the said provision, a commercial expression effectively promotes the image of cigarette, even without disclosing the cigarette company's name during the charity event, would still be deemed a kind of sponsorship, leading to a fine on that company. The TCC agreed such provision amounted to a censorship on commercial expressions. However, it held that such censorship was appropriate for and proportionate to the pursuit of the important purpose of safeguarding public health. Therefore, the provision was held constitutional.

**(3) J.Y. Interpretation No. 795: Remedy for the Successful Petitioners of this Court Case**

This Interpretation was made to supplement the J.Y. Interpretation No. 742 (December 2016). In J.Y. Interpretation No. 742, the TCC held that there shall be judicial remedy for the comprehensive review of urban plans. The petitioners of Interpretation No. 742 filed a combined petition for retrial, which was admitted by the Administrative Court yet denied on the ground that the petitioners did not filed their petitions for administrative appeal within the thirty-day period after the publication of the urban plans in dispute in 1992.

The TCC held that the requirement of having filed petitions for administrative appeals within the period specified by the applicable law was a disproportionate undue burden on the petitioners, as there was no legal remedy available for the comprehensive review of urban plans under then-applicable laws in 1992. No one could have foreseen the decision of Interpretation No. 742 and have filed his or her petition for administrative appeals then. Therefore, the TCC ruled that the filing for retrial by the petitioners of the present case shall be deemed as having filed their petitions for administrative appeals in time.

**(4) J.Y. Interpretation No. 797: Service of Documents under the Administrative Procedure Act Case**

In this case, the TCC affirmed the constitutionality of the unique postal rule for service of documents as provided for in Administrative Procedure Act. The TCC ruled that the legislature shall enjoy a certain degree of discretion in prescribing the various methods for service of documents on the recipient, as well as when a specific method of service shall take effect. A postal notice on the door of the recipient to the effect that the documents to be served was already deposited in the post office, in the opinions of the TCC, should be considered an equivalent to an actual delivery to the recipient in person. Such service by deposit and notice may take effect immediately as soon as it was posted on the door of the recipient, out of concerns for administrative efficiency. However, the TCC also indicated that the competent authorities may adopt a different rule on the effective date of service, in line with other similar laws on the service of documents in civil, criminal or administrative court procedures, in order to better protect the rights of the people.

**(5) J.Y. Interpretation No. 798: Exemption of Vehicle License Tax for the Welfare NPOs Case**

In this decision, the TCC declared unconstitutional two interpretative rules issued by the Ministry of Finance regarding the exemption of Vehicle License Tax for the welfare NPOs under the relevant Act of 2001. The said rules provided that a welfare NPO may claim exemption from Vehicle License Tax for up to three vehicles registered in the same city or county. The TCC held that the said ceiling of three vehicles for each NPO found no basis in either the text of the 2001 Act or the legislative intents, and therefore unconstitutional for violation of the principle of statutory reservation.

### 2.1.3 Interpretation regarding Transitional Justice

#### J.Y. Interpretation No. 793: Ill-Gotten Party Assets Case

This is the first and only decision on the issues of ill-gotten party assets. From 1945 to 2000, the Kuomintang (Chinese Nationalist Party) was Taiwan's ruling party for more than five decades. It was reported that the KMT, taking advantage of its governance during this period, managed to acquire and accumulate enormous wealth and assets, including real estates, foundations, profit-seeking enterprises and investment companies, etc. After the first party turnover in May 2000, the then-ruling DPP (Democratic Progressive Party) once attempted to liquidate the KMT's assets, but to no avail as of 2008. In May 2016 the DPP became the ruling party again and also controlled the majority of the Legislative Yuan (Taiwan's Congress). The DPP soon enacted "The Act Governing the Settlement of Ill-gotten Properties by Political Parties and Their Affiliate Organizations" in August 2016, and then established a new independent agency, the Ill-Gotten Party Assets Settlement Committee, to implement this Act.

This Committee was authorized to take legal actions, including investigation, determination of the party's affiliated organizations, requesting the return of properties to the State, and freezing or seizing the properties, among others. The KMT and its affiliated organizations brought lawsuits against nearly all of such actions taken by the Committee against them. During the trial process, two panels of the Taipei High Administrative Court (THAC) first issued injunctions against the Committee and then suspended a total of three cases pending before them. The said THAC filed three petitions with the TCC, in 2018 and 2019 respectively, to challenge the said Act. In early 2020, the TCC granted review of the said three petitions and consolidated these three cases. On June 30, 2020, the TCC held an oral argument to hear from the petitioners as well as the KMT and its several affiliated organizations.

In this case, the petitioners first argued that only a constitutional amendment may compel any party to return its assets to the State, and therefore the said Act was unconstitutional. The TCC rejected this argument and ruled that the Legislative Yuan had the power to enact such legislation without having to invoke the constitutional amendment procedure.

On the second issue involving the organization of the Committee and the procedures of its exercise of powers under this Act, the TCC ruled that the legislature, under the Constitution, may establish the Committee as an independent agency under the Executive Yuan.

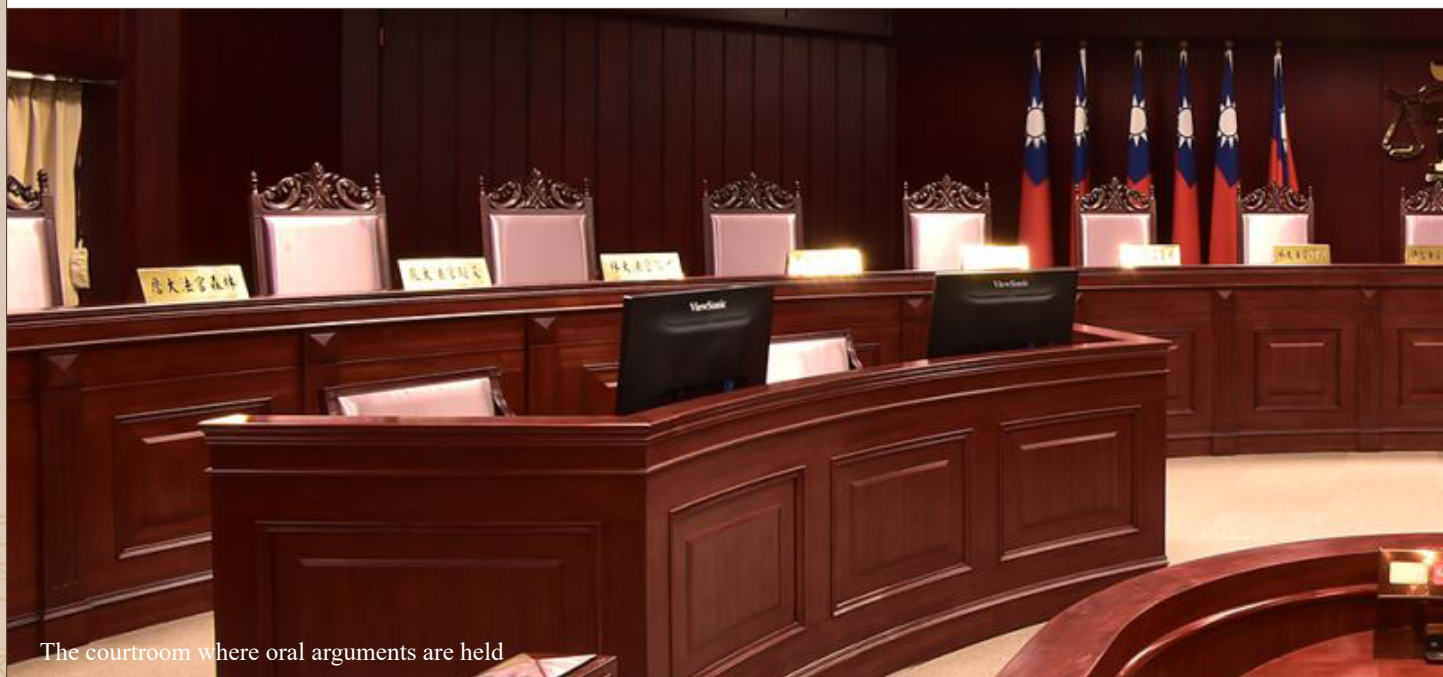
The Petitioners further argued that the said Act constituted impermissible discrimination against the KMT because it singled out the KMT for adverse different treatment. The TCC agreed that, in reality, only the KMT's assets were subject to the enforcement measures of this Act. The TCC therefore agreed that this Act, as applied to the KMT, was indeed a special law targeting only one party. Nevertheless, the TCC found that only those assets acquired *bona fide* or with apparently unfair price after August 15, 1945 were subject to the regulation of this Act, leaving those legitimate assets intact. The TCC held that the government is allowed and mandated to pursue the objectives of transitional justice, in order to strengthen the rule of law in a liberal democracy and to level the playing ground among all political parties in Taiwan. Such compelling interests eventually outweighed the adverse impact on the KMT, without violating the right to equality.

Finally, the TCC rejected the challenges that this Act was an unconstitutional *ex post facto* law. The TCC agreed that it was a retroactive legislation against the KMT. However, it held that the KMT could not claim any legitimate expectation for holding on to its assets obtained under an authoritarian regime created and maintained by itself.

In conclusion, the TCC rejected all the constitutional challenges against this Act.

## 2.2 Oral Arguments

Among the twelve Interpretations rendered in 2020, the TCC held three oral arguments. Under the existing law, oral arguments are not mandatory for constitutional interpretation cases, except for the cases of presidential impeachment trials and dissolution of unconstitutional political parties. In December 1993, the TCC held the first oral argument in history for the case of Interpretation No. 334. As of the end of 2020, oral arguments had been held in sixteen Interpretations. In June 2011, the TCC began to livestream the oral arguments in the case of Interpretation No. 689. Thereafter, there have been eleven oral arguments livestreamed as of December 2020. Once an oral



The courtroom where oral arguments are held

argument is held, the TCC is required to render its Interpretation within two months after the date of oral argument. Beginning from Interpretation No. 791 of March 31, 2020, the TCC announced its decision in an open courtroom, livestreamed to the public, if an oral argument was held in this case. On top of oral arguments, the TCC also holds preparatory hearings, mostly behind closed doors. On July 10, 2018, a public preparatory hearing was held in the TCC courtroom for the first time. In the year of 2020, the TCC held closed-door hearing on Interpretation No. 794, and three public preparatory hearings on Interpretations Nos. 788, 789 and another pending case.





**(1) The Public Preparatory Hearing on March 24, 2020**

The TCC held a preparatory hearing on a case involving the constitutionality of a civil code provision authorizing court-ordered apologies by the defendants to the plaintiffs in a civil action. The final decision on this case is yet to be made, as of the end of 2020.

**(2) The Oral Argument on March 31, 2020**

The TCC held an oral argument on Interpretation No. 791 case, which declared unconstitutional the criminal punishment of adultery in Article 239 of Criminal Code. This Interpretation was announced in an open courtroom on May 29, 2020, marking the first decision-announcement case in history.



Oral argument in the case of Interpretation No. 791



Decision announcement of Interpretation No. 791



### (3) The Oral Argument on June 30, 2020

The TCC held an oral argument on the case of Interpretation No. 793. In this Interpretation, the TCC upheld the constitutionality of the “Act Governing the Settlement of Ill-gotten Properties by Political Parties and Their Affiliate Organizations,” a piece of special legislation for transitional justice. The TCC announced its Interpretation No. 793 on August 28, 2020. Both the oral argument and the decision announcement were accessible to the public via livestream.



Oral argument in the case of Interpretation No. 793.

Chairperson LIN representing Party-Asset Commission as Respondent (on the left) and the legal counsel Mr. LEE representing one of the affiliated organizations as third-party (on the right)

#### (4) The Oral Argument on November 3, 2020

The TCC held an oral argument in the case of Interpretation No. 799, which upheld, in most parts, the constitutionality of post-imprisonment mandated therapy of sex offenders under indefinite detention. The TCC also announced its Interpretation No. 799 in the Courtroom on December 31, 2020. Both the oral argument and the decision announcement were accessible to the public via livestream.



Oral argument in the case of Interpretation No. 799:  
Judge-Petitioner PAN (on the left) and the legal counsel Mr. CHOU representing Petitioner LU (on the right)

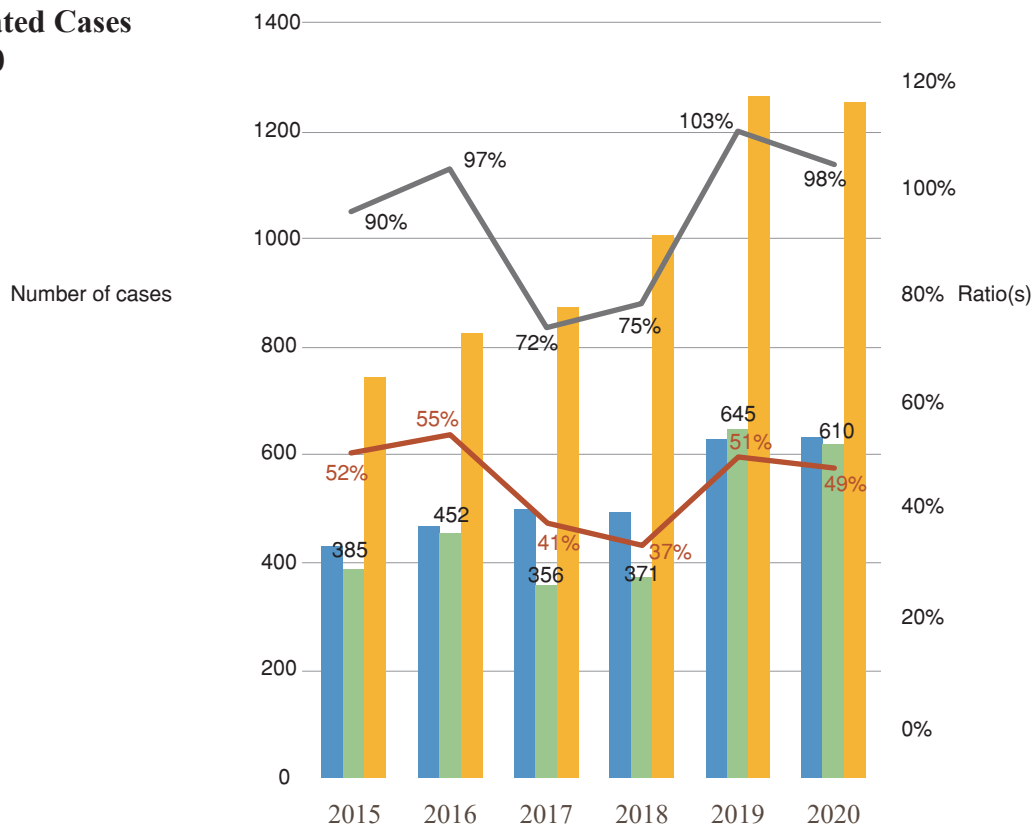
## 2.3 Performance and Statistics of 2020

In 2020, the TCC terminated a total of 619 petitions, including twelve Interpretations and 607 dismissed or otherwise disposed cases. Among the twelve Interpretations, seven were filed by individuals, while the other five by ordinary courts. In a larger picture, the TCC produced a total of sixty-five Interpretations from 2016 to 2020. Among them, forty-three Interpretations were initiated by individuals (66%).

The following diagram demonstrates the number of new petitions filed annually from 2015 to 2020. The grey line indicates the percentage of terminated cases (including all decisions and orders made by the TCC) against the numbers of new petitions in the same year. For example, the percentage in 2020 was 98%, second only to 103% in 2019.

In 2020, the number of pending cases before the TCC slightly dropped to 1253 from the previous peak of 1264 (see the yellow bars). The percentage of terminated cases against pending cases also dropped to 49% in 2020 from 51% in 2019.

### New and Terminated Cases from 2015 to 2020

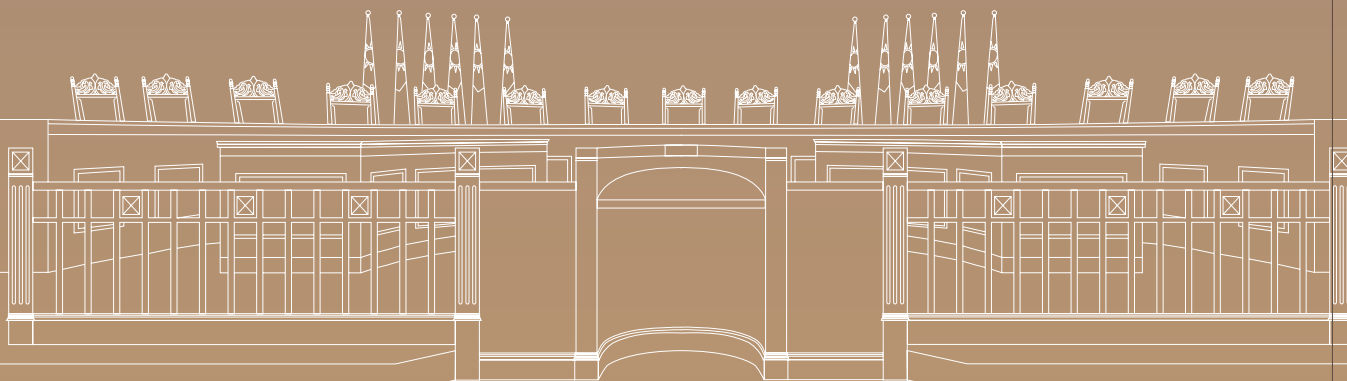


Number of New Cases	427	467	497	492	627	634
Number of Terminated Cases	385	452	356	371	645	610
Number of Cases Lodged	745	827	872	1008	1264	1253
Ratio of Terminated Cases against New Cases	90%	97%	72%	75%	103%	98%
Ratio of Terminated Cases against Cases Lodged	52%	55%	41%	37%	51%	49%

Annum

3

## Other Activities



### 3.1 The Annual TCC Symposium



Chief Justice HSU delivered his opening remarks in the Annual TCC Symposium of 2020

From 2000 on, the TCC began to hold an annual conference in December in order to promote the dialogue between the judiciary and the academia. Scholars with diverse expertise are invited by the TCC to present papers on topics in relation to constitutional issues at the conference. Each year, the conference brings versatile constitutional discussions among the Justices, the speakers and the commentators.

The theme of the annual conference of 2020 was “Technology, Risk and Protection of Human Rights.” In President HSU’s opening remark, he first pointed out the significance of fundamental rights amid the modern lifestyle where individuals enjoy the fruits of hi-techs. President HSU emphasized that the State, particularly the judiciary, shall stay alert for the potential risks to fundamental rights in any circumstances. This year’s symposium consisted of four panels, focusing on “The clash between the freedom to information and right to personal data amid the digital era,” “Controversies concerning assisted suicide,” “Fundamental rights issues arising from the public health policies and management,” and “Food safety, the right to life and the right to health”, respectively.



## 3.2 International Exchanges

Each year, the TCC received a number of judges, scholars and other legal professionals from abroad. Some of them were invited to give a talk at the TCC or participate in a panel discussion with the Justices and clerks. In 2020, the number of international guests dramatically shrank, due to the COVID-19 pandemic. One of the rare guests visiting the TCC was Associate Justice Goodwin H. LIU (Supreme Court of California), who visited the TCC and gave a talk on the rules and procedures of the Supreme Court of California on February 19.





### 3.3 Public Relations and Education

To enhance a more trustworthy and accessible judiciary, the Judicial Yuan launched its official account on the popular SNS APP – Line and an official fan page on Facebook in early 2020. Messages posted on the Line or Facebook cover diverse topics, including the latest TCC Interpretations and court decisions, newly adopted laws or rules of procedure of the courts, recent law reforms, etc. Messages in this Line account are often written and presented in an easy-to-understand, story-telling style accompanied by videos, animations and multi-media visuals, in the hope of providing useful judicial information to the public.



The official account of the Judicial Yuan on Line



The official fan page of the Judicial Yuan on Facebook



President HSU “opening” the gate of Judicial Yuan to launch this one-whole-day event.

On November 28, 2020, the Judicial Yuan held an “Open House the Judicial Yuan” event, as part of city-wide series events, “Open House Taipei 2020.”

During this event, the public was allowed to walk around and visited a variety of open areas, including the TCC Courtroom and conference rooms, the office of the President and Chief Justice, Guest Lounge and other compartments in this classical architecture, designed by a Japanese architect, Ide Kaoru and built in 1934.



The visitors walked through the main Gate of the Judicial Yuan

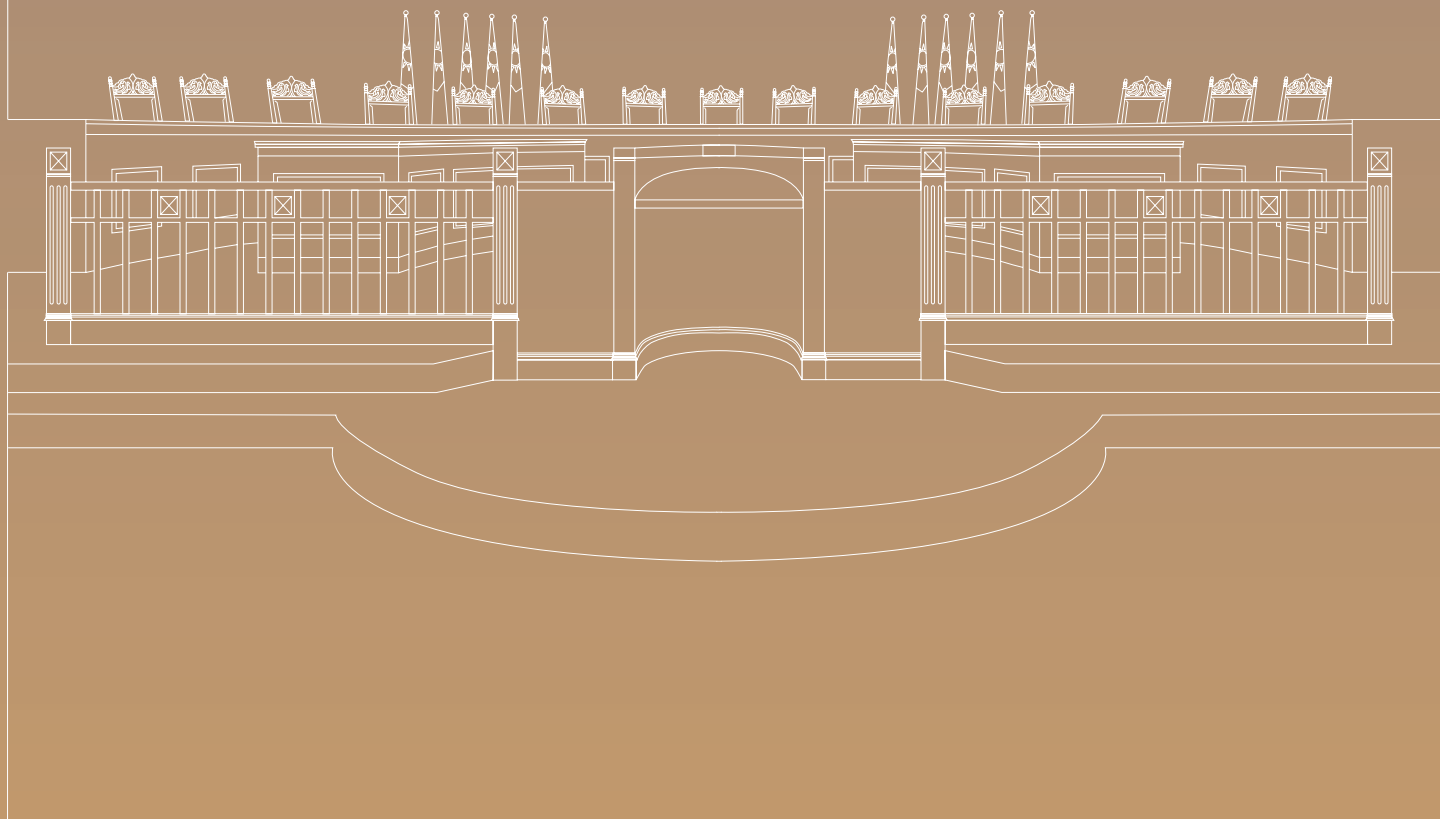


The Visitors in the TCC Courtroom



# 4

## Preparations for the Implementation of the Constitutional Court Procedure Act (2022)





In January 2019, the Legislative Yuan amended the “Constitutional Interpretation Procedure Act” (CIPA) of 1993 to a brand new “Constitutional Court Procedure Act” of 2019, which will take effect on January 4, 2022. This new CCPA established a new panel system, each consisting of three Justices and authorized to dismiss a petition by unanimity, while the decisions on the merit remain the exclusive power of the TCC as a whole. It also expanded the jurisdiction of the TCC to include the “constitutional review of the final court decisions,” on top of the existing abstract review powers. The decisions of the TCC, used to be called “Interpretation” will be renamed to “Court Judgment” in line with the decisions of other courts in Taiwan. The positions of each Justice on the conclusions of each decision, either on the merit or on the procedural grounds, as well as the name of Justice writing the majority opinion, will be noted in the end of the future TCC decision. The voting threshold for a constitutional decision on the merit will be reduced from two-thirds to a simple majority of Justices present at the deliberation conferences. On procedural matters, this new CCPA mandates more transparency, including on-line publication of the petition briefs and reply briefs immediately after a petition is granted review by the TCC, introduction of the “*Amicus Curiae*” briefs, and permission for the parties to apply for access to the court dossier.

In order to facilitate the TCC’s handling and deciding cases, several bylaws were drafted in place and will take effect in mid-2021. These new rules include those governing the format of briefs, the electronic submission of briefs, the courtroom order, access to the court dossiers, the audio/video recording of oral arguments and the preservation of the said audio/videos.

Meanwhile, the TCC has been in the process of recruiting research judges and more assistants to assist each Justice, in order to better prepare the TCC for the foreseeable increasing number of cases.