

# 2024

## Annual Report



TAIWAN  
CONSTITUTIONAL COURT





# 2024

**Annual Report**



**TAIWAN  
CONSTITUTIONAL COURT**







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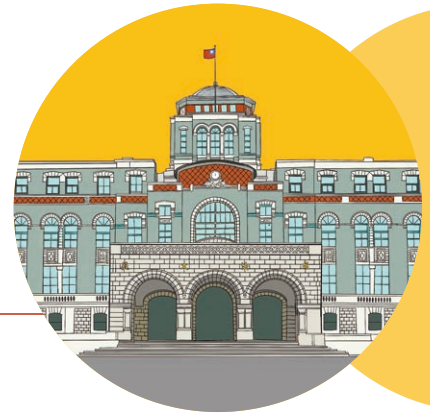


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# Foreword by Chief Justice



As we reflect on the year 2024, we find ourselves standing at a crossroads marked by splendid achievements and significant change within the Taiwan Constitutional Court (TCC). The year 2024 has been a testament to the dedication and resilience of all who serve in this esteemed institution, who never shy away from high-profile cases and navigate the complexities of an evolving legal landscape.

In 2024, we bade farewell to seven Justices who dedicated their enormous efforts to upholding the rule of law and the principles enshrined in our Constitution. Their retirement marks the end of an era that leaves a great legacy. Prior to their retirement, the Justices and staff worked tirelessly to hand down important judgments that have left their mark on history, particularly issues such as freedom of speech, the death penalty and the legislative act governing the powers of the Legislative Yuan. Their contributions have profoundly shaped our legal framework and protected the rights of individuals in our society.

The dark side of the same year is that the TCC faces unprecedented vacancies on the bench, a challenge that could impede our ability to fulfil our constitutional mandate. The recent passage of the proposed reform of the Constitutional Court Procedure Act by the Legislative Yuan has further complicated this situation. It is a reminder that democracy may be fragile, and our system of justice must adapt and evolve in the face of change, ensuring that the rule of law remains.

This Annual Report serves not only as a tribute to our former Chief Justice Tzong-Li HSU, whose leadership was instrumental in affirming the values of the Constitution and fundamental rights for all citizens, but also as a commemoration of retired Justices—Justice Jeong-Duen TSAI, Justice Chih-Hsiung HSU, Justice Chong-Wen CHANG, Justice Jui-Ming HUANG, Justice Sheng-Lin JAN and Justice Jau-Yuan HWANG— whose unwavering commitment to justice has inspired all who serve in this court. Furthermore, it is a record of the hard work and dedication of our supporting staff led by Director-General



Judge Hao-Ching YANG, including Research Judge Yi-Yi LEE, Ms. Mei-Hui WANG and Ms. Tai-Chun KUO, who make the publication of this Annual Report possible. Their efforts are vital in maintaining the integrity of our judicial process.

Let us draw strength from our collective resilience and belief in the rule of law. These will guide us through challenging times, ensuring justice is upheld and protecting the rights of every individual.

*Shieh, Ming-Yan*



**Prof. Dr. Ming-Yan SHIEH**

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







# The Court

Organization

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Jurisdiction and Procedures

Staff of the TCC



# Organization

Under Article 5 of the Additional Articles of the Constitution, the Judicial Yuan has fifteen Justices, of whom the Chief Justice serves as the President of the Judicial Yuan and one Justice as the Vice President. All the Justices are nominated by the President of the Republic of China (Taiwan) and approved by the Legislative Yuan (Congress). The Constitution provides that each Justice of the Judicial Yuan shall serve a term of eight years, independent of the order of appointment to office, and shall not serve consecutive terms. The Justices serving as President and Vice President of the Judicial Yuan shall not enjoy the guarantee of an eight-year term.

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:



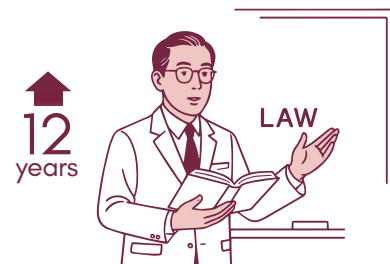


- (a) having served as a judge or prosecutor for at least fifteen years with outstanding performance;



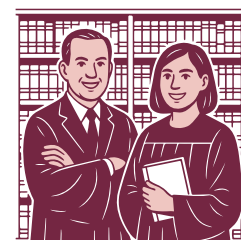
- (b) having actually practiced as a licensed attorney at law for at least twenty-five years with outstanding performance;

- (c) having been a full professor of law teaching the core subjects of law for at least twelve years and with specialized publications;



- (d) 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;

- (e) having been devoted to study of law while having political experiences with a distinguished reputation.

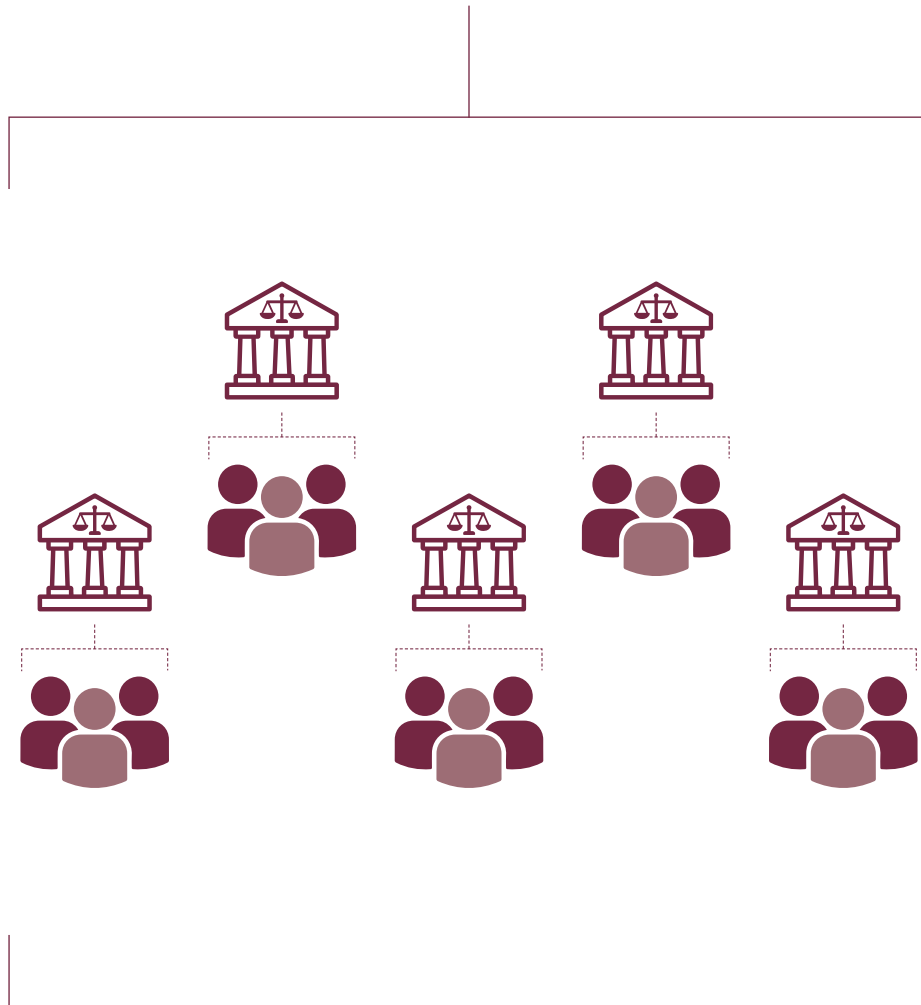


To ensure diversity, Article 4 of the Judicial Yuan Organization Act also limits the number of Justices nominated through each qualification, that each shall not exceed one-third of the total number.





# TCC



The TCC sets up five Chambers, each consisting of three Justices, to manage procedural matters, especially preliminary screening of cases. In preliminary screening of cases, the Chambers decide on the admissibility of petitions. Under certain circumstances, dismissal decisions of the Chambers may be referred to the Constitutional Court for further deliberation on its admissibility. Unless there is reason for recusal, the Taiwan Constitutional Court hears oral arguments and announces Judgments *en banc*, *i.e.*, with all justices sitting.

## Relationship with the Judicial Yuan

The Constitution of the Republic of China (Taiwan) was promulgated in 1947. Under the Constitution, the central government consists of five branches: the Executive Yuan, the Legislative Yuan, the Judicial Yuan, the Examination Yuan, and the Control Yuan.

Following Article 77 of the Constitution, the Judicial Yuan shall be the highest judicial organ of the State and shall have charge of civil, criminal, and administrative cases, and over cases concerning disciplinary measures against public functionaries. Pursuant to J.Y. Interpretation Nos. 86 and 530, the Judicial Yuan shall have the competence to stipulate administrative regulations on the procedural matters of taking charge of cases and submitting statutory bills relevant to its authority to the Legislative Yuan.

The Judicial Yuan currently does not exercise general jurisdiction over all legal controversies. Its present adjudicating function is embodied through the constitutional reviews of the Taiwan Constitutional Court.

The Judicial Yuan established several departments and offices to assist its functions. One of the departments is the Department of Clerks for the Constitutional Court, which serves as a supporting body to the Taiwan Constitutional Court.

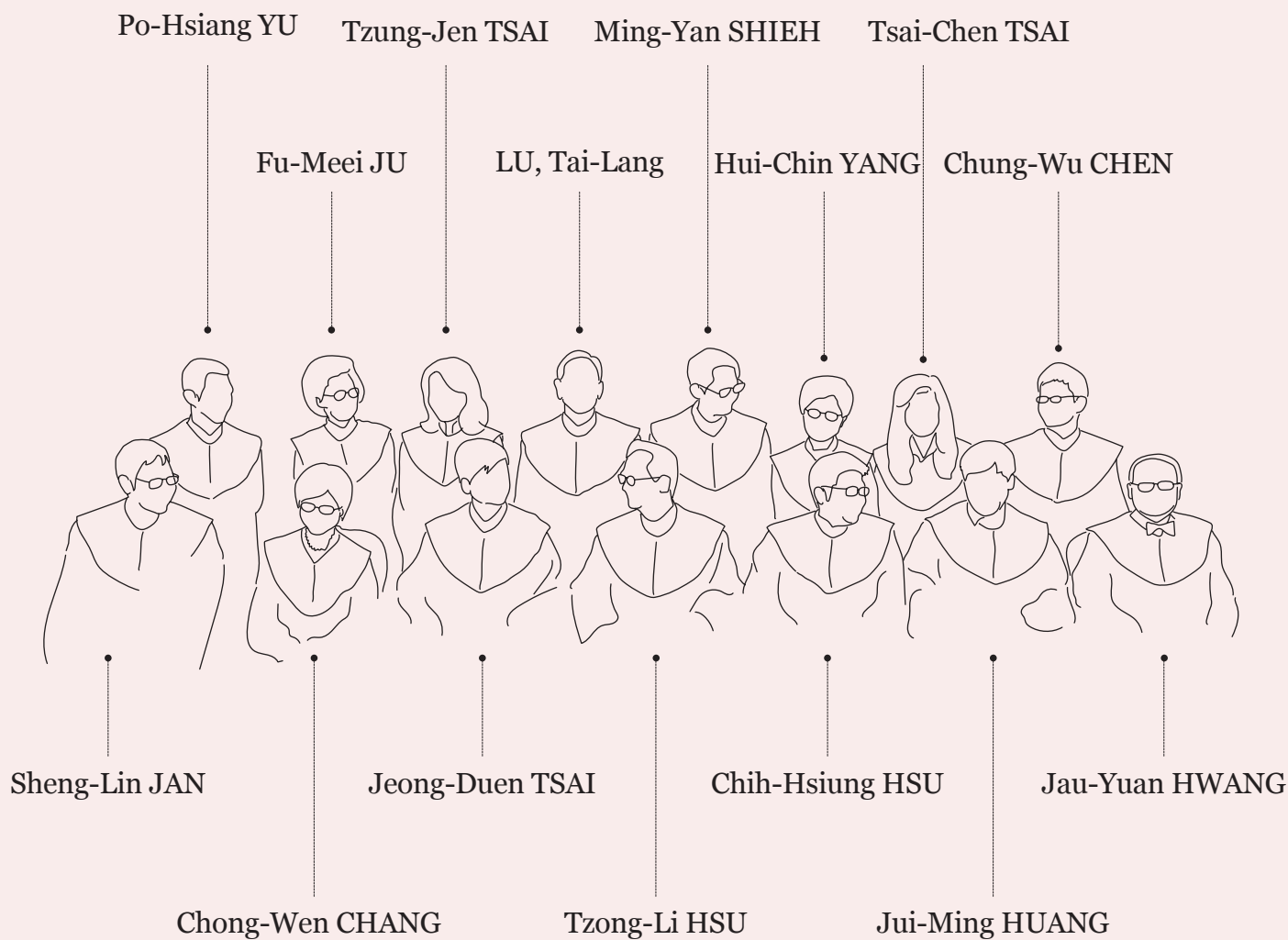






# Justices

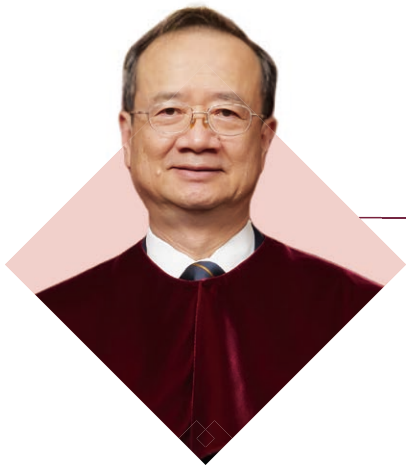




# Composition of the Court

[ 2023.10.01-2024.10.31 ]





Chief Justice & President of Judicial Yuan

**Tzong-Li HSU**

Since 2016 / End of term on October 31, 2024



Full CV

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

Professor, Department of Law, National Taiwan University  
(1992-2003, 2013-2016)

Professor, Department of Law, Fu-Jen Catholic University  
(2011-2013)



Full CV

Justice & Vice President of Judicial Yuan

**Jeong-Duen TSAI**

Since 2016 / End of term on October 31, 2024



Justice, Supreme Court (2014-2016)

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

Judge and President, Taiwan Hsinchu and Taiwan  
Miaoli District Court (2005-2011)



Justice

**Chih-Hsiung HSU**

Since 2016 / End of term on October 31, 2024



Full CV

Professor, Center of General Education, National Chiayi  
University (2010-2016)

Adjunct Professor, College of Law, National Taiwan  
University (1997-2021)

Minister without Portfolio, Executive Yuan (2001-2008)



Justice

## Chong-Wen CHANG

Since 2016 / End of term on October 31, 2024



Full CV

Deputy Secretary-General, Judicial Yuan (2015-2016)

Judge and President, Kaohsiung High Administrative Court (2010-2015)

Justice, Supreme Administrative Court (2009-2010)



Full CV

Justice

## Jui-Ming HUANG

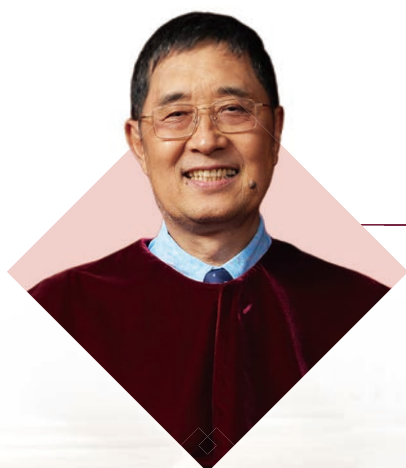
Since 2016 / End of term on October 31, 2024



Representative Partner, Baker& McKenzie Taipei Office (2009-2016)

President, Taipei Bar Association (2000-2002)

Adjunct Clinical Professor, College of Law, National Taiwan University (2014-2017)



Justice

## Sheng-Lin JAN

Since 2016 / End of term on October 31, 2024



Full CV

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

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

Attorney (1981-1992)



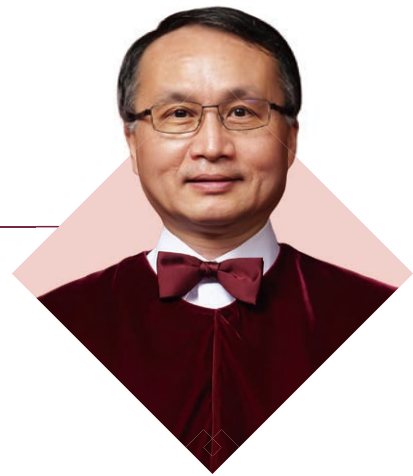


Full CV

Justice

**Jau-Yuan HWANG**

Since 2016 / End of term on October 31, 2024



Adjunct Professor of Law, College of Law, National Taiwan University (2016-present)

Professor of Law, College of Law, National Taiwan University (2004-2016)

Vice Dean & Director of Graduate Institute of Interdisciplinary Legal Studies, National Taiwan University College of Law (2012-2015)



Justice

**Ming-Yan SHIEH**

Since 2019 / Acting President of the Judicial Yuan  
& Chief Justice of the Constitutional Court  
Since November 1, 2024



Full CV

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

Professor, College of Law, National Taiwan University (1990-1998; 1998-2019)

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



Full CV

Justice

**LU, Tai-Lang**

Since 2019



Secretary-General, Judicial Yuan (2016-2019)

President, Judges Academy (2013-2016)

Judge and Division Chief, Taiwan High Court (2011)



Justice

**Hui-Chin YANG**

Since 2019



Full CV

President, Kaohsiung High Administrative Court (2015-2019)

Judge, Disciplinary Chamber of the Judiciary, Judicial Yuan (2012-2015)

Justice, Supreme Administrative Court (2009-2015)



Full CV

Justice

**Tzung-Jen TSAI**

Since 2019



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

Minister of Examination (2016-2019)

Professor of Law, College of Law, National Taiwan University (2010-2019)



Justice

**Tsai-Chen TSAI**

Since 2023



Presiding Judge, Supreme Court (2020-2023)

President, Taiwan Shilin District Court (2016-2020)

Director-General, Criminal Department, Judicial Yuan (2014-2016)





Justice

**Fu-Meei JU**

Since 2023



Full CV

Secretary-General, Control Yuan (2020-2023)

Prosecutor and Lead Prosecutor, Supreme Prosecutors Office (2008-2020)

Director, Department of Transportation, Environment, and Natural Resources (Formerly known as the Division Chief of the Third Division), Executive Yuan (2000-2008)



Full CV

Justice

**Chung-Wu CHEN**

Since 2023



Adjunct Professor of Law, National Taiwan University College of Law (2023-present)

Professor of Law, National Taiwan University College of Law (2007-2023)

Distinguished Professor, National Taiwan University (2011-2023)



Justice

**Po-Hsiang YU**

Since 2023



Full CV

Managing Attorney, Cogito Law Office (2005-2023)

(Executive) Member of the Executive Committee and

Board Member, Judicial Reform Foundation (1999-2023)

President, Taipei Bar Association (2020-2022)

Chief Justice Tzong-Li HSU, Justice Jeong-Duen TSAI, Justice Chih-Hsiung HSU, Justice Chong-Wen CHANG, Justice Jui-Ming HUANG, Justice Sheng-Lin JAN, Justice Jau-Yuan HWANG ended their terms of office on October 31, 2024.



## Farewell Ceremony





# Jurisdiction and Procedures

In accordance with the Article 1, Constitutional Court Procedure Act (CCPA) of 2022, the TCC has jurisdiction in respect of the cases below:

- (1) constitutionality of laws and constitutional complaints;
- (2) disputes between constitutional organs;
- (3) impeachment of the President and the Vice President;
- (4) dissolution of unconstitutional political parties;
- (5) local self-government;
- (6) uniform interpretation of statutes and regulations.

When other legislation provides for petitions to the Judicial Yuan for interpretation, such petitions shall comply with the comparable provisions of this Act.



## **Abstract Review of the Constitutionality of Statutes and Regulations**

The state organs of the highest level, legislators, courts and individuals may petition the Constitutional Court to declare a law unconstitutional pursuant to the requirements set out in the Constitutional Court Procedure Act.



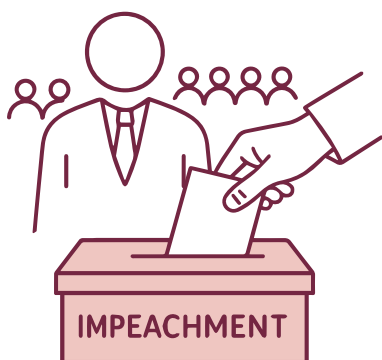


### **Constitutional Complaint against the Final Court Decisions**

Any person who believes that a final court decision not in his or her favor contravenes the Constitution may petition the Constitutional Court to declare the court decision unconstitutional.

### **Disputes between Constitutional Organs**

Highest state organs (*i.e.*, the Executive Yuan, the Legislative Yuan, the Judicial Yuan, the Control Yuan, and the Examination Yuan) may petition the Constitutional Court to settle a dispute with each other. The dispute must relate to their respective constitutional competences and result from the exercise of the organ's power. The disputing organs must first attempt to resolve the dispute through negotiation.



### **Impeachment of the President and the Vice President**

The Legislative Yuan may petition the Constitutional Court to uphold the impeachment of the President or the Vice President upon the proposal of no fewer than half of the total members of the Legislative Yuan and passed by no fewer than two-thirds of the total members thereof.





## Dissolution of Unconstitutional Political Parties

The competent authority (*i.e.*, the Ministry of the Interior) may petition the Constitutional Court to dissolve an unconstitutional political party if it considers that the goals or activities of the relevant political party endanger the existence of the Republic of China or the constitutional order of liberal democracy.



## Protection of Local Self-Governance

Local self-governing bodies (both legislative and executive), when exercising their powers, may petition the Constitutional Court to declare national laws or regulations adopted by the central government unconstitutional, if they believe that the relevant provisions infringe upon their competence of local self-governance bestowed by the Constitution.



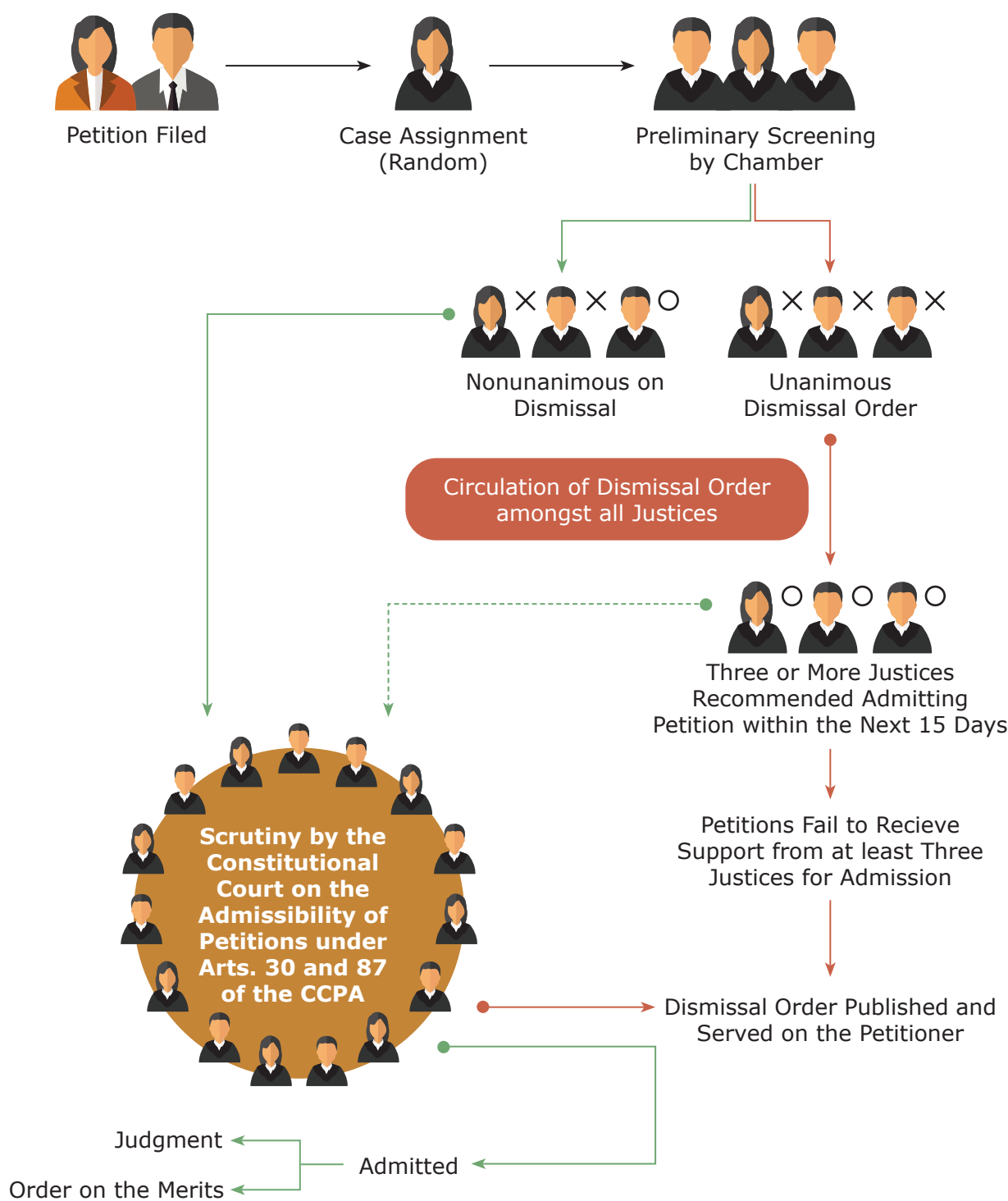
Following Article 30 of the Local Government Act, self-government ordinances and regulations may be nullified by the Executive Yuan or relevant central competent authorities if contradictory to the Constitution, laws, regulations promulgated in accordance with law, or self-government ordinances of the superior self-governing bodies. Local self-governing bodies may later enter into administrative litigation with the central government. After exhausting legal remedies, they may also petition the Constitutional Court to declare the final court decision unconstitutional on the basis that it infringed upon their powers of local self-government laid down in the Constitution.



## Uniform Interpretation of Statutes and Regulations

People may petition the Constitutional Court to issue a uniform interpretation regarding a statute or a regulation in respect of which two courts of last resort have rendered conflicting interpretations.

## Overview: A Flowchart of the Constitutional Court Procedure



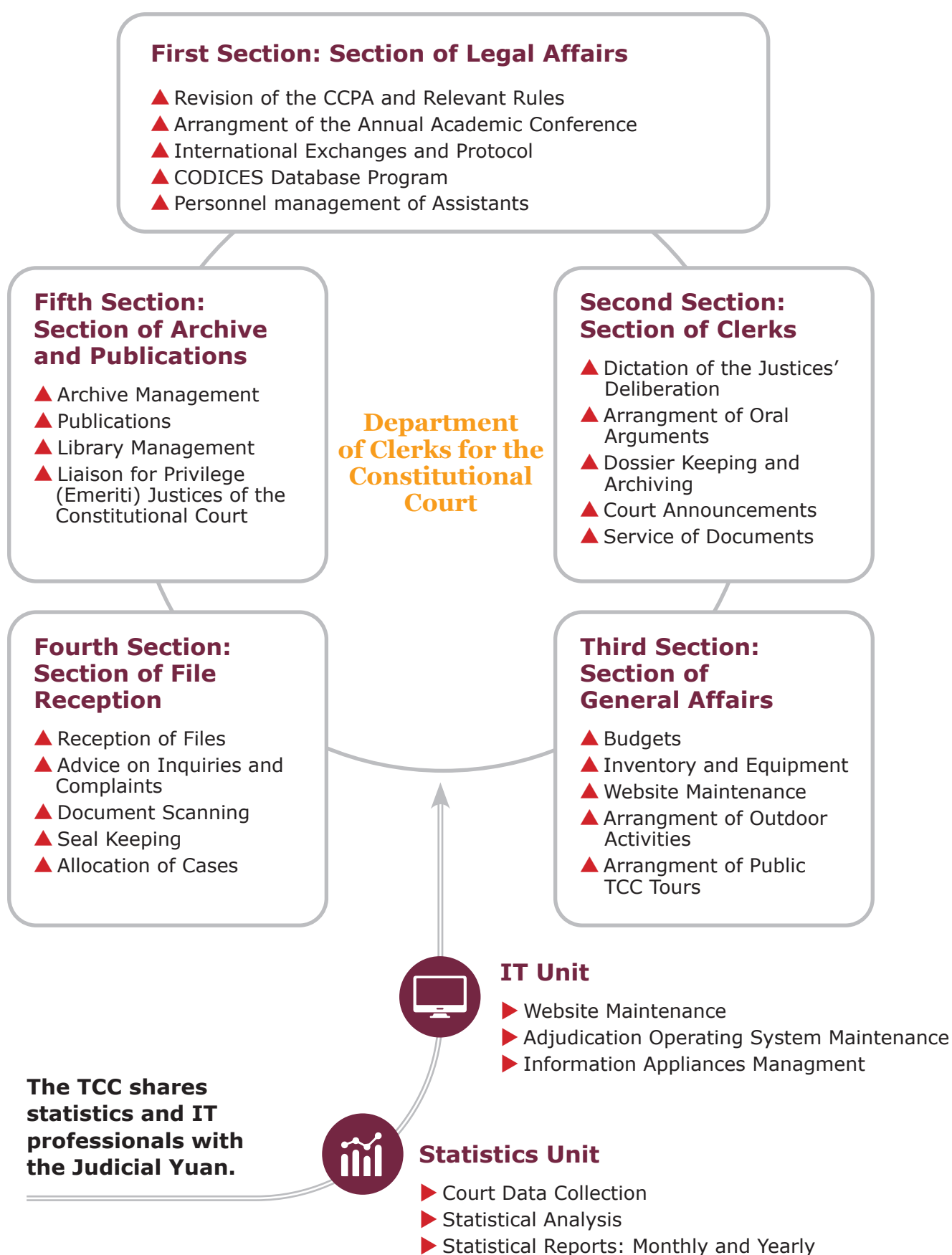


## Staff of the TCC

The Justices are assisted by Research Judges and assistants on case research and other related work. In the administrative sector, the TCC is supported by the Department of Clerks for the Constitutional Court (Judicial Yuan) under the supervision of the Director-General of the Constitutional Court. The Department of Clerks for the Constitutional Court currently has five sections, each with different purposes, such as dossier keeping, revision of court rules, and budget management. Statistics and IT professionals are also deployed by the Judicial Yuan to assist TCC with tasks such as statistics analysis and website maintenance.













The image shows the cover of a report titled "2024 Timeline of the TCC". The background is a photograph of a classical stone balustrade with a row of carved acanthus leaves. The right side of the image is overlaid with a large, abstract geometric design consisting of several overlapping triangles in various shades of olive green and a light cream color. The title is written in a white, bold, serif font, centered in the upper right portion of the cover.

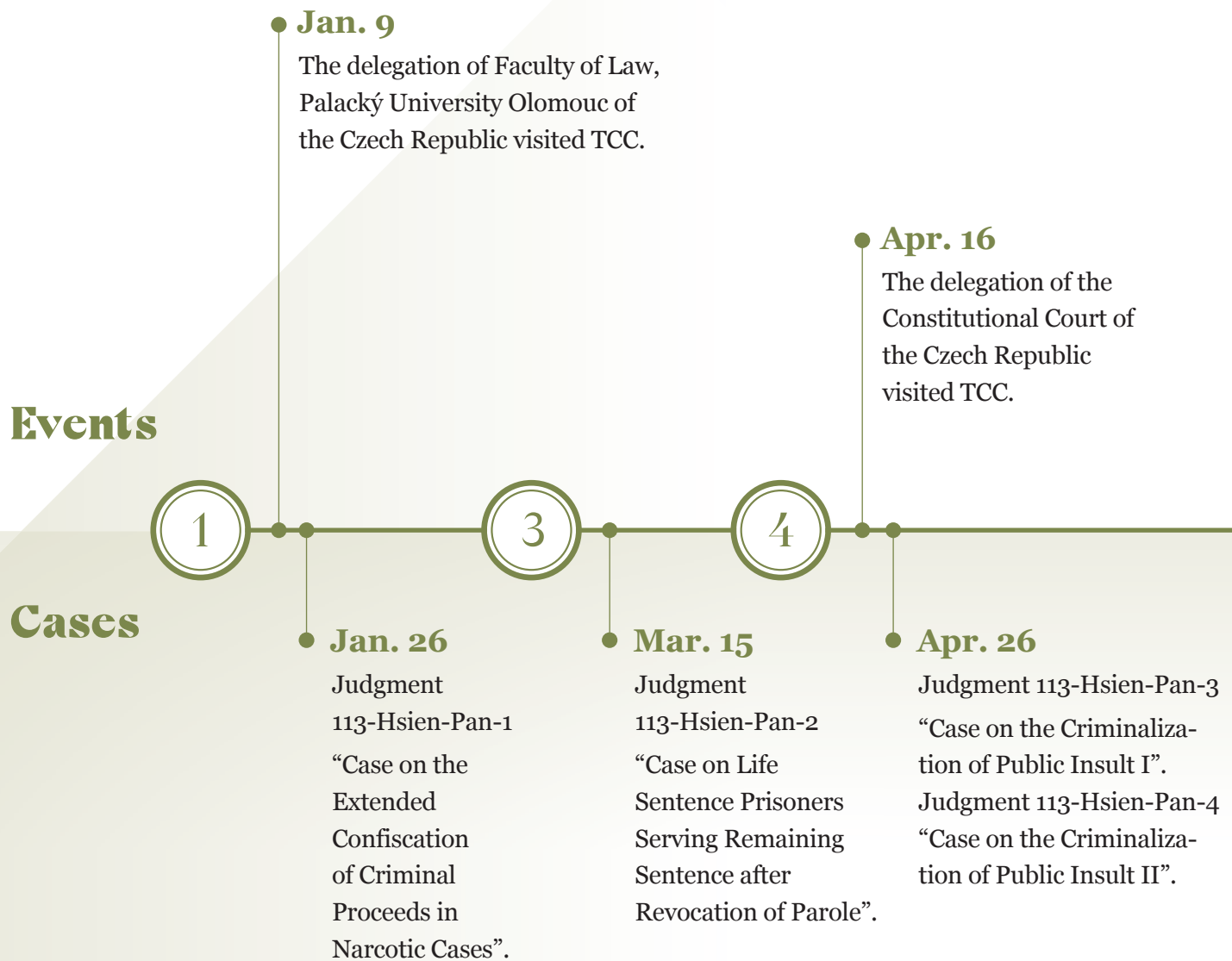
# **2024 Timeline of the TCC**





# 2024

## Timeline of the TCC





## ● May 20

The Inaugural Ceremony for the 16th-term President and Vice President of the Republic of China (Taiwan), with Chief Justice Tzong-Li HSU of the Taiwan Constitutional Court administering the oath of office.

## ● Aug. 26

TCC Delegation visited the Constitutional Court of Belgium

## ● Aug. 30

TCC Delegation visited Dutch Council of State

## ● Aug. 27

TCC Delegation visited the European Court of Human Rights

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## ● Aug. 9

Judgment 113-Hsien-Pan-7 “Case on Accruing Previous Seniority in Salary Assessment for Certified Substitute Teachers”.

## ● May 31

Judgment 113-Hsien-Pan-6 “Case on the Constitutionality of Height Requirements for the Entrance Exam of Police Officers and Firefighters”.

## ● May 24

Judgment 113-Hsien-Pan-5 “Case on the Criminalization of Insulting a Public Official or the Discharge of Public Duties”.



### Oct. 31

Chief Justice Tzong-Li HSU,  
Justice Jeong-Duen TSAI,  
Justice Chih-Hsiung HSU,  
Justice Chong-Wen CHANG,  
Justice Jui-Ming HUANG,  
Justice Sheng-Lin JAN,  
Justice Jau-Yuan HWANG  
ended their terms of office.

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### Sep. 20

Judgment  
113-Hsien-Pan-8  
“Constitutionality  
of the Death  
Penalty Case”.

10

### Oct. 28

Judgment 113-Hsien-Pan-10  
“Case on the Standard for Medical Fees”.  
Judgment 113-Hsien-Pan-11  
“Case on the Calculation of Adjusted Taxable Gift  
in Estate Tax”.

### Oct. 25

Judgment 113-Hsien-Pan-9  
“Case on the Constitutionality of the Amendments  
to the Law Governing the Legislative Yuan’s Power  
and the Criminal Code”.





### Nov. 1

The President of the Republic designated Justice Ming-Yan SHIEH as the Acting President of the Judicial Yuan under Article 7, Paragraph 5 of the Judicial Yuan Organization Act. Also serving *ex officio* as Chief Justice of the TCC, he will serve the term as Acting President until the succeeding President and Vice President of the Judicial Yuan are nominated and appointed by the President of the Republic with confirmation by the Legislative Yuan.



### Dec. 7

The Court held its Annual Academic Conference 2024.





## Oral Arguments 2024

### Case on the Constitutionality of Height Requirements for General Police Officers Entrance Exam

- ▲ On January 16, 2024, the TCC held an oral argument for a constitutional complaint concerning the height requirements of the police entrance exam. The petition raised questions as to whether Article 7, Paragraph 2 and Article 8, Paragraph 1 of the Civil Service Special Examination Regulation for General Police Officers, which imposed height requirements for firefighter and police officer examinees, violate the right of holding public offices guaranteed by Article 18 of the Constitution.
- ▲ The oral argument was attended by the petitioner (assisted by counsel), respondent representatives from the Ministry of Interior (Executive Yuan) and the Ministry of Examination (Examination Yuan), appointed scholars, and a commissioner from the National Human Rights Commission (Control Yuan).
- ▲ Justice Tzung-Jen TSAI recused herself from this oral argument.



Director General Mr. Huan-Chang HSIAO of the National Fire Agency presenting his statements on behalf of the Ministry of Interior. Alongside was sign-language interpreter Ms. Hsing-Chiang WANG.



Petitioner Ms. Yun-Hsuan CHEN providing her arguments to the court.



Appointed Scholar Associate Professor Hsiu-Yu FAN presenting her opinion in this case.



Justice Ming-Yan SHIEH inquiring during oral argument. He later wrote the decision of this case.



Justice Chung Wu CHEN inquiring during oral argument. He later wrote the sole concurring opinion of this case.

## Case on Including Previous Job Tenure in Salary Assessment for Elementary/Junior High School Substitute Teachers

- ▲ On March 12, 2024, the TCC held an oral argument on a constitutional complaint concerning the rules on salary assessment for full-time substitute teachers. The petition raised questions as to whether the distinctions of remuneration guidelines (based on school levels, regions, and types of schools) and, additionally, the differential treatment between substitute and regular teachers violates the constitutional principle of equal protection.
- ▲ The oral argument was attended by the petitioner (assisted by counsel), respondent representatives from the Ministry of Education (Executive Yuan) and the New Taipei City Government, appointed scholars, and a commissioner from the National Human Rights Commission (Control Yuan).



Petitioner Mr. Kai-Hsiang CHANG presenting his arguments to the court.



The Ministry of Education's *agent ad litem*, Professor Ren-Miau LEE, presenting his argument.



Commissioner Ta-Hua YEH presenting her opinion on behalf of the National Human Rights Commission, Control Yuan.



Justice Jeong-Duen TSAI inquiring during oral argument. He later wrote the decision of this case.





## Case on the Constitutionality of the Death Penalty

- ▲ On April 23, 2024, the TCC held an oral argument on a case concerning the constitutionality of the death penalty. The case was consolidated by petitions from thirty-seven death-row inmates.
- ▲ The oral argument was attended by the counsels of the petitioners, respondent representatives from the Ministry of Justice (Executive Yuan), appointed scholars, a commissioner from the National Human Rights Commission (Control Yuan), and a representative from the Association for Victims Support.
- ▲ Justice Jeong-Duen TSAI, Justice Tsai-Jen TSAI, and Justice Po-Hsiang YU recused themselves from this oral argument.



Legal counsels representing death-row petitioners. Alongside was sign-language interpreter Mr. Chen-Hui LI. People observing the session were seated behind.



Deputy Director of the Department of Prosecutorial Affairs (Ministry of Justice), Ms. Mei-Hui CHIEN, giving her closing arguments.



Appointed Scholar Research Professor Jimmy Chia-Shin HSU presenting his opinion.



Appointed Scholar Professor Chueh-An YEN presenting his opinion.



Justice Sheng-Lin JAN inquiring from the bench. He later wrote an opinion dissenting in part that questioned the constitutionality of the death penalty in general.



Legal Counsel Ms. Shu-Chen CHEN presenting the opinion of the Association for Victims Support (AVS).

### 國際人權法框架

人權保障乃繫於生命之存在，生命權為其他人權之基礎，亦為個人實現所有權利與自由之先決條件。

現存之死刑制度以剝奪人民生命為刑罰制裁，侵害基本權之核心及本質，與法治國家保障人權之目的及國際人權公約相悖。

- ✓ 世界人權宣言第3條、第5條
- ✓ 公民與政治權利國際公約（ICCPR）前言、第6條、第7條
- ✓ ICCPR第36號一般性意見（2018）
- ✓ ICCPR《第二任擇議定書》
- ✓ 聯合國身心障礙者權利委員會關於平等與不歧視之第6號一般性意見（2018）
- ✓ 聯合國兒童權利公約第3條、第9條、第14號一般性意見（2013）
- ✓ 聯合國大會8次決議：62/149（2007）、63/168（2008）、65/206（2010）、67/176（2012）、69/186（2014）、71/187（2016）、73/175（2018）、75/183（2020）
- ✓ 關於廢除死刑的美洲人權公約議定書（1990）
- ✓ 歐洲保護人權與基本自由公約關於任何情況下廢除死刑的《第13號議定書》（2002）



Commissioner Yung-Cheng KAO, representing the National Human Rights Committee (Control Yuan), outlining the International Human Rights Law framework regarding the death penalty. Alongside was sign-language interpreter Ms. Ching-Chao HSU.



Justice Jau-Yuan HWANG inquiring from the bench. He later wrote the decision of this case.



Legal counsel representing the ensemble delivering their closing arguments.

# 2024 Oral Arguments



## Case on the Constitutionality of the Amendments to the Law Governing the Legislative Yuan's Power and Article 141-1 of the Criminal Code

- ▲ The case was consolidated from four petitions filed by fifty-one legislators of the Legislative Yuan (jointly), the Executive Yuan, President Lai Ching-te, and the Control Yuan. Before the oral argument, the TCC held an open preparatory proceeding on July 10, 2024 to determine whether the circumstances warranted a preliminary injunction to suspend the implementation of the challenged provisions. The TCC later ordered a preliminary injunction on July 19, 2024.
- ▲ On August 6, 2024, the TCC held an oral argument on this case, which concerned the constitutionality of the legislative process and the content of the newly amended Law Governing the Legislative Yuan's Power and Article 141-1 of the Criminal Code.



Secretary-General to the President Mr. PAN Men-an presenting his arguments on behalf of the President.



The Executive Yuan's *agent ad litem*, Professor Hsing-An CHEN, presenting his arguments alongside Secretary-General Mr. KUNG Ming-hsin of the Executive Yuan.



Secretary-General Mr. Chun-Yi LEE presenting his argument on behalf of the Control Yuan.



Deputy Minister Mou-Hsin HUANG representing the Ministry of Justice, one of the respondents.



The courtroom ensemble on the day of oral argument.



- ▲ The oral argument was attended by the petitioners (assisted by counsel), respondent representatives from the Legislative Yuan, appointed scholars, and representatives from the relevant agency, the Ministry of Justice (Executive Yuan).



Legislators Mr. Chien-Ming KER, Ms. Szu-Yao WU, and Mr. Chia-Pin CHUNG representing the group petitioners of fifty-one legislators.



The agents *ad litem* of respondent agency Legislative Yuan, Legislators Mr. Tsung-Hsien WU, Ms. Hsiao-Ling WENG, and Mr. Kuo-Chang HUANG.



Justice Fu-Meei JU, Justice Tsai-Chen TSAI, and Justice Po-Hsiang YU questioning the parties.



Appointed scholar Professor Pao-Chen Paul DUNG presenting his opinion.



Appointed scholar Associate Professor Jia-He LIN presenting his opinion.



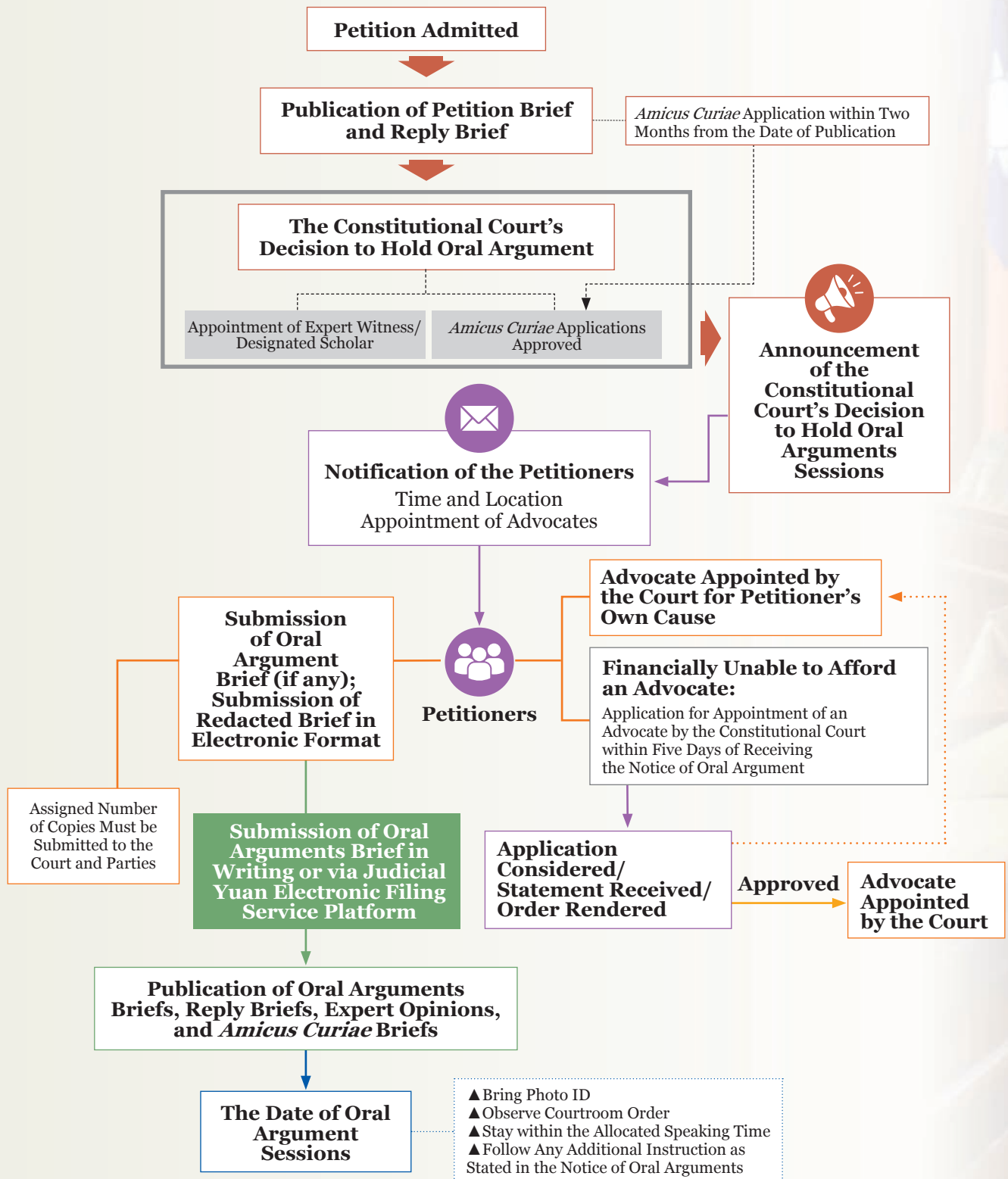
Justice Tzung-Jen TSAI questioning the parties during the preparatory proceeding on July 10, 2024. She later wrote the decision of this case.



The courtroom ensemble on the day of oral argument.



## Oral Argument Session









又地人  
所以能久  
久矣以



# Major Cases in Brief

**Note:**

These summaries constitute no part of the decisions but are prepared by the Department of Clerks for the Constitutional Court for readers' reference only.

Stylized excerpts are quoted from the summaries of the Judgments translated in advance of the full translated texts.





TCC Judgment 113-Hsien-Pan-1 (2024)

## Case on the Extended Confiscation of Criminal Proceeds in Narcotic Cases



#Non-retroactivity of Law

#Proportionality

#Expropriation

#Fair Trial

Original Case Assignment No.: 111-Hsien-Min-4096.

Argued on November 27, 2023.

Decided and announced on January 26, 2024.

### Background of the Case

In 2020, Taiwan adopted the “extended confiscation” scheme in the amendment of Article 19, Paragraph 3 of the Narcotics Hazard Prevention Act (hereinafter “Provision I” and “NHPA”) to prevent drug-related crimes. The provision allows the confiscation of illegal gains to be extended to those obtained from unlawful activities other than those (drug crimes) for which the accused is convicted with. Furthermore, Article 2, Paragraph 2 of the Criminal Code (hereinafter “Provision II”) stipulated that the confiscation of proceeds shall apply the law in force at the time of judgment. Provisions I and II combined made it possible in practice for courts to order extended confiscation in narcotic cases before 2020.

The petitioner of this case, I-Hui CHI, was seized with her spouse for manufacturing Category Two narcotics in 2019. During the investigation, the police also seized NTD 97,093,700 in cash. The court of first instance found the petitioner guilty and ruled

that NTD 92,870,000 were illegal profits obtained from other illegal activities. The court ordered that amount to be confiscated under Provisions I and II. This decision was upheld by the appellate court and was final after the appeal was dismissed by the Supreme Court. The petitioner lodged a constitutional complaint against Provisions I and II, arguing that (1) Provision I is penal but unclear in wording; (2) Provision I lowers the standard of proof for the prosecutor to secure a court-ordered confiscation; and that (3) Applying Provision II with Provision I will result in retroactive application of Provision I, which violates the principle of *lex retro non agit* (principle of non-retroactivity).

Judgment 113-Hsien-Pan-1 (2024) was announced on January 26, 2024. Justice Sheng-Lin JAN wrote this Judgement. Two concurring opinions were filed, one of which was filed jointly by two Justices. Three dissenting opinions were filed, one of which was filed jointly by five Justices, one by four Justices, and the last one also by four Justices.



## 01

**The legislator allows the State to confiscate criminal proceeds of illegal acts completely to restore the legitimate proprietary order and prevent the offenders from using the proceeds as capital for future drug crimes.**

**– from para. 28 of the reasoning**

## Decision of the Court

Referring to international and foreign legal materials, the Taiwan Constitutional Court (TCC) pointed out that the extended confiscation of criminal proceeds under NHPA was not a penal measure. The extended confiscation scheme was a non-conviction-based measure that aims to deprive property and property interests (hereinafter together as “assets”) yielded from illegal conduct, to prevent such assets from reinforcing future crimes, and to restore the legal proprietary order disrupted by unlawful conduct. The TCC emphasized that extended confiscation does not cover non-criminal-linked assets and, therefore, does not have a punishing effect. It is taken against illegal gains, which differs from personal culpability-focused criminal punishment. For these reasons, Provision I did not concern the principle of *nulla poena sine lege*, the principle of *nulla poena sine culpa* (*Schuldprinzip*), and the principle of presumption of innocence.

As Provision I is not of penal nature, the review of its clarity need not adopt the strict scrutiny that applies to criminal punishments. The TCC referred to Article 38-1, Paragraphs 2 and 4 of the Criminal Code, and ruled that the term “other illegal acts” in Provision I can be deduced as limited to criminal activities. Provision I did not violate the principle of clarity of law (the principle of clarity and precision of legal provisions).

In terms of the proportionality of Provision I, the TCC applied a rational basis review. The TCC ruled that the provision aimed at eliminating drug crimes, which is of legitimate public interest. It also noted that the applicable narcotic cases under Provision I were limited to a more serious category, and that the concept of “Crimes don’t pay” and the Civil Law risk allocation of “*mala fides* recipients should not keep their unjust enrichment” were embodied by Provision I. The TCC concluded, considering that flexibilities of reducing and exempting confiscation were allowed on a case-by-case basis to avoid undue hardship, extended confiscation under Provision I was rationally connected to its purpose.

The TCC emphasized that prosecutors bear the burden of proof when it comes to extended confiscation. The defendant’s inability to explain the origins of one’s assets should not be the sole reason for extended confiscation. The court should consider the balance of probabilities—as suggested in Directive 2014/42/EU of the European Parliament and of the Council of April 3, 2014, and referred to by the legislators—if there was a high possibility that the assets involved were obtained from other illegal acts thus warranting extended confiscation. In addition,



if the prosecution motioned for extended confiscation, its scope should be specified and evidence should be provided to clarify why the prosecution deemed the assets were derived from criminal conduct other than the charged crimes. The TCC ruled that since defendants were given the opportunity to defend themselves both in the cases they were accused of and during the court review of extended confiscation, the procedure of Provision I did not violate the defendant's right to a fair trial and the right to institute legal proceedings.

Finally, the TCC ruled that although Provision II enabled extended confiscations to narcotic cases that happened before the implementation of the extended confiscation provision, it only rendered a false-retroactivity effect (*unechte Rückwirkung*) that aimed at rectifying the unlawful property allocation at present, which did not violate the principles of *lex retro non agit* and legitimate expectation.



English Summary



Full Text in  
Chinese

TCC Judgment 113-Hsien-Pan-2 (2024)

## Case on Life Sentence Prisoners Serving Remaining Sentence after Revocation of Parole



#Proportionality

#Conditional Release

#Personal Freedom

Original Case Assignment No.: 109-Hsien-Erh-333.

Argued on December 19, 2023.

Decided and announced on March 15, 2024.

### Background of the Case

In 1997, legislators amended Article 77 of the Criminal Code, raising the parole-eligible minimum term for life sentences to fifteen years (twenty years for recidivists) to address the rise of the recidivism rate (including new offenses) among parolees. The legislators also added Article 79-1, Paragraph 5 of the Criminal Code (as amended September 26, 1997, hereinafter “Provision I”), stipulating that once the paroles of life sentence parolees were revoked, they must serve a fixed remaining sentence of twenty years, which should be discounted from the calculation for the next eligible parole date. The paragraph applies to parole revocations after the 1997 amendment. Said provisions were further amended on February 2, 2005 (implemented on July 1, 2006), raising both the length of the parole-eligible minimum term and the fixed remaining sentence for life prisoners to twenty-five years. The revoked parolee must serve a twenty-five-year fixed remaining sentence without parole under the 2005 version Article 79-1,

Paragraph 5 of the Criminal Code (hereinafter “Provision III”). In other words, the prisoner who started serving their sentence in 2006 must serve imprisonment until 2031 before starting serving a new sentence. After that, they must serve half of the new sentence before being eligible for parole. Article 7-1, Paragraph 2 and Article 7-2, Paragraph 2 of the Enforcement Law of Criminal Code (hereinafter “Provision II” and “Provision IV”) stipulated that the calculation of remaining sentences should apply either Provision I or III depending on the time that the reason for parole revocation happened.

There were thirty-six consolidated petitions filed by thirty-five people and the Supreme Court Criminal Panel No. 1. The petitions all concern criminal cases in which the petitioners (or the involved parties) were granted parole for their life sentence but got their parole revoked later and had to serve the remaining twenty-year or twenty-five-year sentences. The petitioners argued that Provisions I and III and the pertaining Provisions II and IV were hard for the people to comprehend and





## 02

**Considering the necessity for the punishment to achieve its purpose, the rehabilitative potential of the sentenced person (parolee) shall be re-evaluated in light of all the circumstances prevailing at the time of parole revocation.**

**– from para. 42 of the reasoning**

foresee, thus violating the principle of clarity of law (the principle of clarity and precision of legal provisions). They also contended that the disputed provisions did not distinguish the revoking reasons and stipulated all revoked parolees to serve twenty or twenty-five years of fixed remaining sentences, consequently violating the principle of proportionality.

This case was argued on December 19, 2023. Judgment 113-Hsien-Pan-2 (2024) was announced on March 15, 2024. Justice Jui-Ming HUANG wrote this Judgement. Justice Tsai-Chen TSAI recused herself from this case. Three concurring opinions, one opinion dissenting and concurring in part, and three opinions dissenting in part were filed.

### Decision of the Court

The Taiwan Constitutional Court (TCC) emphasized that although serving the remaining sentence is the (re-continued) execution of one's original sentence, considering the protection of individual liberty under Arti-

cle 8 of the Constitution, the calculation and execution of the remaining sentence after parole revocation should follow the principle of proportionality.

The TCC noted that the purpose of Provisions I and III, which is to counter recidivism, was legitimate and of important public interest. However, in terms of the measure's necessity, the TCC deemed that it failed to consider the different circumstances that should have been reflected in the length of the remaining sentences to be served on a case-to-case basis. As life sentence parolees may be in different stages of rehabilitation, and they may have different reasons for parole revocation (e.g., conducting petty crimes or merely violating probation rules under the Rehabilitative Disposition Execution Act), requiring them all to serve a fixed remaining sentence of twenty years or twenty-five years was not proportionate. Therefore, the TCC ruled that Provisions I and III violated the principle of proportionality and the protection of individual liberty.

The TCC also ruled that Article 79-1, Paragraph 5 of the Code should be amended in a two-year grace period. If the amendment is past due, the competent authority shall enforce the remaining sentences based on the severity of the newly committed crime or the rehabilitative disposition violation. The TCC also gave instructions on how the courts should proceed when faced with interlocutory appeals regarding the same issue.

The TCC quashed part of the petitioners' court decisions and remitted their cases to the Supreme Court. It further ruled that the Supreme Court should suspend proceedings

before the amendment and that the Prosecutor General might file an extraordinary appeal for other similar cases.

As for prisoners who were serving their remaining sentences under Provisions I or III at the time of this Judgment, the TCC ruled that if the length of time served exceeded the adjusted applicable remaining sentence, the prisoners should be deemed to have completed their terms or have begun serving the sentence for their new offense. However, the TCC stated that there should be no ensuing criminal compensations, state compensations, or reduction of sentences for the newly committed crime in this situation.

Regarding Provisions II and IV, which stipulate that either Provision I or III should apply depending on the time that the reason for parole revocation happened, the TCC ruled that they did not have retroactive effects because they were not applied to the facts that occurred before their amendments. Therefore, Provision II and IV did not violate the principle of *lex retro non agit* (non-retroactivity of the law) and the protection of legitimate expectations (*Vertrauensschutz*).



English Summary

Full Text in  
Chinese



TCC Judgment 113-Hsien-Pan-3 (2024)

## Case on the Criminalization of Public Insult I



**#Proportionality**

**#Weighing of Interest**

**#Freedom of Opinion**

**#Freedom of Expression**

Original Case Assignment No.: 113-Hsien-Min-900243.

Argued on December 25, 2023.

Decided and announced on April 26, 2024.

### Background of the Case

**A**rticle 309, Paragraph 1 of the Criminal Code (hereinafter the “Provision”) stipulates “A person who publicly insults another may be sentenced to short-term imprisonment or a fine of not more than nine thousand dollars.” A question was raised as to whether imposing criminal punishment for public insults is compatible with the constitutional protection of freedom of speech.

There were twenty-two petitioners in this case, half of whom were found guilty finally under the disputed provision, and the other half were judges (or court panels) who questioned the constitutionality of the Provision when hearing public insult cases. The petitioners argued that: (1) The term “insults” in the Provision is unclear, thus violating the principle of clarity of law; (2) A speech would not harm the reputation. A speech being found insulting only reflects the subjective judgment of the listener; (3) Criminal measures are not the least restrictive means to protect the right to reputation; and (4) the disputed provision may lead to a chilling effect on freedom of speech. In addition, some of the petitioners also filed consti-

tutional complaints against the final court decisions in which they were convicted for under the disputed provision.

This case was argued on December 25, 2023. Judgment 113-Hsien-Pan-3 (2024) was announced on April 26, 2024. Justice Jau-Yuan HWANG wrote this Judgment. Two concurring opinions and one opinion dissenting and concurring in part were filed.

### Decision of the Court

The Taiwan Constitutional Court (TCC) noted that the protection of freedom of speech could be limited if the speech undermines another’s rights or public interest. Referring to the Provision’s legislative history and practice, the TCC pointed out that its purpose was to protect people’s right to reputation, which might include the protection of a person’s social reputation, honor, and dignity in personality. The TCC examined the three possible scopes of protection and elaborated that: (1) social reputation is what others objectively think of a person; (2) honor is what one subjectively expects or feels of his or her own reputation; and (3) dignity in personality entails a person’s societal subjective



## 03

**If a publicly issued insulting speech has harmed a person's social reputation or dignity in personality beyond the extent that a general person can reasonably tolerate, it is not merely offensive but anti-social.**

– from para. 63 of the reasoning

status respected and treated as equals by others. The TCC ruled that protecting a person's subjective feeling is not an appropriate purpose because it cannot be verified. Only the protection of a person's social reputation or dignity in personality were appropriate purposes of the Provision.

Moreover, the TCC reasoned that the textual scope and implication of the term “public insult” lacked clear definition, creating a possibility of overreaching and unduly restricting people's freedom of speech. The TCC ruled that the punished act of public insult entails, in the context of individual cases, insulting speeches given publicly and purposefully to hurt another's reputation to the extent that exceeds what a person could reasonably tolerate. It also entails that another's right to reputation is more worthy of protection than the offender's freedom of speech after weighing the competing factors, such as the speech's impact on another's reputation, contribution to public discourse, and positive values in academic or artistic fields. The TCC ruled the Provision was proportionate and did not violate the constitutional protection of the freedom of speech so long as it was construed as such.

In addition, the TCC added that public insults, under the definition mentioned above, are also anti-social. It is especially the case when the insult is intended to degrade a person's structurally vulnerable character (e.g., race, gender, sexual orientation, disabilities.) The TCC ruled that the criminal punishment of such speech provided a general deterrence effect, which did not violate the *ultima ratio* principle in criminal law. However, to meet the requirement of proportionality in sentencing, the Constitutional Court opined that short-term imprisonment should only be considered for severe public insult cases, such as online or digitally transmitted insults that cause continuous, accumulative, and widespread harm to the victims.

In terms of the clarity of the Provision, the TCC pointed out that although the term “insult” is value-dependent and indefinite, it is still viable for the courts to interpret and apply the term in individual cases. Hence, the Provision conformed to the principle of clarity law.

In the end, the TCC quashed parts of the petitioners' original court decision. The cases were remitted to each of their courts of jurisdiction.



English Summary



Full Text in  
Chinese



TCC Judgment 113-Hsien-Pan-5 (2024)

## Case on the Criminalization of Insulting a Public Official or the Discharge of Public Duties



**#Right\_to\_Dignity**

**#Right to Respect for One's Honor and Reputation**

**#Freedom of Expression**

**#Freedom of Opinion**

Original Case Assignment No.: Hui-Tai-13556.

Argued on December 26, 2023.

Decided and announced on May 24, 2024.

### Background of the Case

Article 140 of the Criminal Code (hereinafter the “Provision”) stipulates: “A person who insults a public official during the discharge of his or her legal duties or publicly makes insults about the discharge of such legal duties shall be sentenced to imprisonment for not more than one year, short-term imprisonment, or a fine of not more than one hundred thousand New Taiwan Dollars.” A question was raised as to whether imposing criminal punishment for insulting on-duty public officials or publicly insulting the discharge of their legal duties is compatible with the constitutional protection of freedom of speech.

There were five petitioners in this case. One was a judge from the Changhua District Court who questioned the constitutionality of the Provision when hearing relevant criminal cases, and the other four were defendants who had been found guilty finally under the disputed provision. The petitioners argued that the Provision infringed freedom of speech by not

conforming to the principle of clarity of law (the principle of clarity and precision of legal provisions), the principle of proportionality in sentencing, equality, and the principle of proportionality. In addition, some of the petitioners filed constitutional complaints against their final court decisions.

The petitioners’ cases were consolidated and later argued on December 26, 2023. Judgment 113-Hsien-Pan-5 (2024) was announced on May 24, 2024. Justice Jau-Yuan HWANG wrote this Judgment. Two concurring opinions, two opinions concurring in part and dissenting in part, and three opinions dissenting in part were filed.

### Decision of the Court

The Taiwan Constitutional Court (TCC) held that Article 140 of the Criminal Code is partly unconstitutional for violating the protection of freedom of speech.

The TCC pointed out that freedom of speech

## 05

**The sanctity of the civil service, listed as a purpose of the legislation during the disputed provision's implementation in 1935, entails the unchallengeable sanctity of the civil service and its official duties. However, such a purpose is abstract in its contents and reflects an antiquated point of view. It clearly clashes with the purpose of freedom of speech, which is the supervision of the government and the development of democracy."**

**– from para. 36 of the reasoning**

under Article 11 of the Constitution is not absolute and could be subject to different limitations. However, speeches concerning the government and civil service should be highly protected by the Constitution for their functions, such as facilitating the formation of public opinion, overseeing the implementation of policies, and practicing democracy. The TCC elaborated that the content and viewpoint of such speeches should be allowed to compete and engage in the marketplace of ideas. The State should be more lenient with the people's choice of words and expression of emotions, rather than suppressing dissenting opinions directly by criminal measures.

The TCC elaborated that the Provision contained two offenses that should be reviewed separately: one (the first half of the Provision) is the offense of insulting an official in

the discharge of their legal duty (hereinafter "Part A"), and the other (the second half) is the offense of publicly insulting the discharge of such duty (hereinafter "Part B"). For the reason that the Provision imposed content-based regulation and subsequent punishment on the freedom of expression, which might involve censorship, the TCC decided to apply intermediate scrutiny when reviewing Part A, and strict scrutiny for Part B.

With reference to the Provision's legislative purpose and judicial practice, the TCC noted that Part A could have three objects of legal protection (*Rechtsgut*): the official's reputation, the sanctity of the civil service, and the performance of official duties. Under a systematic approach of statutory interpretation, the TCC ruled out the official's social reputation and dignity in reputation as the object of legal protection of Part A. The TCC also found the protection of the civil service's sanctity was antiquated, abstract in content, and clashed with the purpose of freedom of speech. Furthermore, it was also incompatible with the liberal democratic constitutional order. Only the performance of official duties was an appropriate object of legal protection. Furthermore, to avoid the Provision from overreaching, the insults punishable under Part A should be limited to those that could hinder the performance of official duties. The element of *mens rea*, instead of merely expressing negative feelings or suspicion of government conduct, was also required. The TCC ruled that Part A is constitutional so long as its application is limited appropriately within the scope of its literal meaning and implications. The TCC also ruled that offenses punishable by Part A should be limited to on-site insults that could substantively hinder the public official from performing his or her du-





ties. The TCC concluded that limiting the application of Part A was necessary for attaining its purpose and conformed to the *ultima ratio* principle in criminal law.

In terms of Part B, the TCC pointed out that since this kind of speeches concerned criticism of governmental powers, criminal punishments for such speeches would lead to a greater chilling effect compared to civil or administrative measures. The TCC declared

Part B unconstitutional for violating the protection of freedom of speech and should cease to be effective immediately because such speeches—even if their wording was vulgar or being simply venting— could scarcely create any clear and present danger to the performance of official duties.

The TCC also quashed one of the joint constitutional complaints and remanded the case to the Taiwan High Court.



English Summary



Full Text in  
Chinese

TCC Judgment 113-Hsien-Pan-6 (2024)

## Case on Constitutionality of Height Requirements for the Firefighter Entrance Exam



#Gender Equality

#Biological Difference

#Employment in Public Sector

Original Case Assignment No.: 111-Hsien-Min-3005.

Argued on January 16, 2024.

Decided and announced on May 31, 2024.

### Background of the Case

**A**rticle 8, Subparagraph 1 of the Civil Service Examination Regulation for General Police Officers (hereinafter “Provision I”), which also applies to the firefighter entrance exam, stipulates that examinees would fail their physical examination at the second stage of the exam if they couldn’t meet the following height requirements: 165 centimeters for non-Indigenous men, 160 centimeters for non-Indigenous women, 158 centimeters for Indigenous men, and 155 centimeters for Indigenous women. Furthermore, under Article 7, Paragraph 2 of the said Examination Regulation (hereinafter “Provision II”), qualified trainees (who passed the exam) may be asked to have their physicals reexamined by the training institute when necessary, with those failing being disqualified by the Civil Service Protection & Training Commission. The physical reexamination under Provision II applies to all physical qualifications listed under Provision I, which includes height, eyesight, color vision, etc.

The petitioner, Ms. Yun-Hsuan CHEN, passed both the writing exam (first stage) and the physical examination (second stage) for the firefighter entrance exam in 2018. However, she was later asked to undergo a reexamination of her physicals during training. The petitioner was measured at 158.9 centimeters upon reexamination, not meeting the height requirement for non-Indigenous women. The petitioner was subsequently disqualified. After ensuing administrative appeal and judicial litigations, her case was dismissed finally by the Supreme Administrative Court. The petitioner filed a constitutional complaint, arguing that: (1) Provision I, which implements height-based classification for the qualification of firefighters, would not pass strict scrutiny, and that the provision violates the equality principle for disproportionately barring more women from becoming firefighters; (2) Provision I disproportionately excludes non-Indigenous women shorter than 160 centimeters altogether without considering the various types of tasks (in the firefighting agencies) that shorter people may have advantage in performing;



## 06

**The application of Provision I has consistently shaped the work environment and culture of the police and firefighting forces to cater to and be defined by male needs, which makes it hard for women to participate.**

– from para. 30 of the reasoning

and (3) The term “when necessary” in Provision II is hard for the trainees to comprehend and foresee, thus lacking legal clarity (clarity of law)

### Decision of the Court

The Taiwan Constitutional Court (TCC) pointed out that Provision I stipulated sex-based different treatment, which should be reviewed under intermediate scrutiny. Specifically, Provision I provided different minimum height requirements for the firefighter entrance examinees to reflect the difference in heights between the two sexes in this country. The TCC referred to the statistics from 2017 to 2020 by the Health Promotion Administration (Ministry of Health and Welfare) and found that the average height of male citizens within the age group that is eligible to take the firefighter entrance exam (eighteen to thirty-seven years old) is 172.0 centimeters. The average height for their female counterparts is 159.5 centimeters. The TCC further found that the minimum height requirements (160 centimeters for female

examinees and 165 centimeters for male examinees) excluded a higher percentage (fifty-five percent) of women than that of their male counterparts (ten percent). In other words, the application of Provision I resulted in a sex disparity that demonstrates a statistical significance on a long-term and consistent basis. The TCC pointed out that such disparity resulted in discriminatory treatment to women’s right of taking public examinations and their right of holding public offices.

According to the statistics, male firefighting personnel constitute eighty-eight percent of the firefighting force, whereas their female counterparts account for twelve percent. The TCC pointed out that the application of Provision I has consistently shaped the work environment and culture of the police and firefighters to cater to and be defined by male needs, making it harder for women to participate. Although Provision I aimed to further important public interests, no substantial evidence was provided by the competent authority to support the claim that women shorter than 160 centimeters would incur unbearable hazards during their missions and that stricter height requirements should be set for female examinees to exclude most women from taking this exam. Furthermore, the TCC pointed out that shorter firefighters have their advantages in disaster response given the diverse situations. In conclusion, the TCC ruled that the differential treatment in Provision I was not substantially related to its purpose, rendering the provision repugnant to equal protection under Article 7 of the Constitution. Provision I should cease to be effective one year after the announcement of this decision.



Moreover, the TCC pointed out that although the term “when necessary” in Provision II is an indefinite legal term, its meaning and connotation are comprehensible under common sense. It is also foreseeable for the people regulated by Provision II that they may be asked to have their physical fitness reexamined. The application of Provision II can also be reviewed by a court. As a result, the TCC ruled that Provision II does not contradict the principle of clarity of law (the principle of clarity and precision of legal provisions).

In terms of the petitioner’s original case, the TCC applied Article 64, Paragraph 1 of the Constitutional Court Procedure Act and ruled that when trying the remitted case of the petitioner, the Supreme Administrative Court should decide following the *ratio decidendi* of this decision, notwithstanding the grace period set for the lapse of Provision I.



English Summary

Full Text in  
Chinese



TCC Judgment 113-Hsien-Pan-8 (2024)

## Constitutionality of the Death Penalty Case

**#Proportionality**

**#Right to Life**

**#Procedural Safeguards**

**#Fair Trial**

**#Competency to Stand Trial**

Original Case Assignment No.: 111-Hsien-Min-904052.

Argued on April 23, 2024.

Decided and announced on September 20, 2024.

### Background of the Case

In Taiwan, at the time of the case there were approximately fifty provisions in several separate criminal statutory laws that stipulated capital punishment as the maximum punishment. Under the Criminal Code, the maximum punishment for certain crimes (e.g., homicide, homicide during robbery, rape and homicide, homicide during extortionate kidnapping) is the death penalty. The TCC has formerly upheld the constitutionality of the death penalty applicable under special criminal law provisions in J.Y. Interpretation Nos. 194 (1985), 263 (1990), and 476 (1999). After twenty-five years from the latest constitutional review on this issue, the question of whether the death penalty is constitutional—and if so, what are the substantive and procedural requirements—was raised again upon the petitions filed by petitioners in this case.

There were thirty-seven petitioners in this case, all of whom were death-row inmates. The petitioners were found guilty of at least one of the following four crimes: (1) homicide (offense of Article 271, Paragraph 1 of

the Criminal Code), (2) homicide during rape and aggravated rape (offense under the First Clause of Article 226-1 of the Criminal Code), (3) homicide during robbery (offense of Article 332, Paragraph 1 of the Criminal Code), and (4) homicide during kidnapping for ransom (offense of Article 348, Paragraph 1 of the Criminal Code, both the current and the April 21, 1999 version). The petitioners were all found guilty and sentenced to death in their respective final court decisions between 2000 and 2020. After exhausting all ordinary judicial remedies, the petitioners filed for constitutional reviews respectively. They argued mainly that: (1) The punishment of the death penalty or mandatory death penalty, applicable under the said criminal offences that they were found guilty of, was unconstitutional for violating their right to life; (2) The criminal procedures they underwent violated due process of law, as such procedures had left them without effective assistance of counsel and without proper oral argument during their last appeal; (3) Article 19, Paragraph 2 of the Criminal Code was unconstitutional insofar as it did not prohibit the death penalty from being imposed or executed on those defendants with mental disorders or mental deficiencies.

## 08

**The State may punish the offense of homicide for the purpose of just retribution and maintaining social order, so long as the punishment conforms with the principle of *nulla poena sine culpa* and the due process of law.**

**- from para. 63 of the reasoning**

The petitioners' cases were consolidated and argued on April 23, 2024. Justice Jau-Yuan HWANG authored this Judgment. Justice Jeong-Duen TSAI, Justice Tsai-Chen TSAI, and Justice Po-Hsiang YU recused themselves and took no part in the deliberation, oral arguments or the decision of this case. Justice Sheng-Lin JAN, Justice Tai-Lang LU, Justice Hui-Chin YANG, Justice Tzung-Jen TSAI, and Justice Fu-Meei JU each filed an opinion dissenting in part.

## Decision of the Court

The Taiwan Constitutional Court (TCC) held that the protection of the right to life is not absolute. The State may punish the offense of homicide to protect the lives of people for the purposes of just retribution and maintain social order, so long as the punishment conforms with the principle of culpability (*nulla poena sine culpa*) and due process of law.

The TCC emphasized that the application and procedural safeguard of the death penalty should be reviewed under strict scrutiny, and limited its review to the four crimes in the pe-

titioners' cases, without addressing the constitutionality of the death penalty in general.

In terms of the constitutionality of death penalty applicable under the abovementioned four specific provisions in the Criminal Code:

1. The TCC upheld the constitutionality of the death penalty for homicide, homicide during rape and aggravated rape, homicide during robbery, and homicide during extortionate kidnapping. Applying strict scrutiny to relevant provisions of said offenses, the purposes of just retribution and deterring fatal crimes were deemed of especially important public interest by the TCC. Considering the irreparability of death penalty, it should only be applied to the most serious crimes to conform to the principle of proportionality in sentencing and to the strictest requirement of due process in criminal procedure. To justify a death sentence, the offence must be assessed comprehensively by a court to determine if it qualifies as the "most serious."
2. The TCC declared Article 348, Paragraph 1 of the Criminal Code (as amended April 2, 1999) unconstitutional for imposing a mandatory death penalty for homicide during extortionate kidnapping, as it failed to consider whether the offence met the "most serious" threshold, thus violating the principle of culpability.

The constitutionality of current criminal procedural safeguards for sentencing the death penalty on the offenses of the said four criminal provisions (hereinafter the "cases in question"):





1. The TCC ruled that the Code of Criminal Procedure (CoCP) was unconstitutional insofar as it lacked specific provisions requiring mandatory counsel for the suspects during criminal investigation. The TCC pointed out that the lack of such procedural safeguard during investigation violates the suspect's right to life, right to defense, and due process of law. Authorities concerned were given a two-year grace period to amend relevant provisions as appropriate.
2. The TCC stressed that defendants in such cases must have the right to counsel at all court levels. Under Article 31, Paragraph 1, Subparagraph 1 of the CoCP, defendants of offenses punishable for imprisonment no less than three years shall have mandatory counsel. However, Article 388 of the CoCP excluded mandatory counsel for defendants during final appeal. The TCC declared Article 388 unconstitutional for violating the defendant's right to life, right to a defense, and due process of law. It would cease to be effective upon the announcement of the Judgment in this case. Mandatory counsel shall apply to final appeals for the cases in question immediately. Authorities concerned were given a two-year period to amend relevant provisions as appropriate.
3. The absence of mandatory oral argument in final appeals under Article 389, Paragraph 1 of the CoCP was declared unconstitutional for not complying to the strictest requirement of due process. The TCC pointed out that oral arguments upon the final appeal were necessary for the courts to determine whether an offense qualifies as the most serious and warrants the death penalty. This Article shall cease to be effective upon the announcement of this Judgment. Oral ar-

guments shall be required upon the final appeal for the cases in question immediately. Authorities concerned were given a two-year grace period to amend relevant provisions as appropriate.

4. The Court Organization Act was ruled unconstitutional for not requiring the death penalty to be decided unanimously by a collegial panel of professional judges. The TCC elaborated that this strictest procedural safeguard is essential to ensure certainty about the aggravating factors justifying the death penalty. Authorities concerned were given a two-year grace period to amend relevant provisions as appropriate.

In terms of the constitutionality of imposing the death penalty on defendants with mental disorders or mental deficiencies (hereinafter "mental conditions") in the cases in question:

1. Under Article 19, Paragraph 2 of the Criminal Code, reduction of sentences is not a requirement for an offender whose mental conditions significantly reduced his or her ability of judgment at the time of offense. The TCC ruled that, under the principle of culpability, such offenders shall not be sentenced to death since their quality of being culpable was diminished. Authorities concerned were given a two-year grace period to amend relevant provisions as appropriate.
2. Referencing General Comment No. 36 of the Human Rights Committee under the International Covenant on Civil and Political Rights (ICCPR), the TCC ruled that the defendants with mental conditions rendering them incompetent to stand trial cannot be sentenced to death, even if their condition did not affect their actions during the offense or warrant a trial suspension under Article

294 of the CoCP. Authorities concerned were given a two-year grace period to amend relevant provisions as appropriate. Before the amendment, death sentences shall not be imposed in such cases.

3. The TCC emphasized that the method and execution of death penalty must follow the due process of law and human dignity. The TCC ruled that death-row inmates with mental conditions that impeded their competency for execution shall not be executed. The CoCP and the Prison Act were declared unconstitutional insofar as both laws fell short of such protection. Authorities concerned were given a two-year grace period to amend relevant provisions as appropriate. Before the amendment, death-row inmates who lack such competency shall not be executed.

In terms of the post-judgment remedies for petitioners of this case, the TCC ruled that:

1. Petitioners may request an extraordinary appeal through the Prosecutor General (PG) if their final court decisions applied laws deemed unconstitutional in this Judgment. The PG can also initiate such appeals *ex officio* for their cases.

2. Three of the petitioners, who were with mental conditions, cannot be sentenced to death if their competency to stand trial was significantly reduced. They may request an extraordinary appeal with the PG, or the PG lodge one *ex officio*, after relevant criteria for competency to stand trial are amended by authorities.

3. In cases where the Supreme Court approves the extraordinary appeal by quashing the final court decision and remitting the case, the adjudicating court of the remitted case shall determine whether to order detention, restrictions from going abroad or necessary measures against the petitioners following relevant laws. Under such circumstances, the detention period stipulated in the Criminal Speedy Trial Act (maximum of accumulative five years for detention per Article 5; maximum of accumulative eight years for applying the maximum punishment prescribed in each applicable provision) shall be recalculated from the time when the final court decision is quashed.



English Summary



Full Text in  
Chinese



TCC Judgment 113-Hsien-Pan-9 (2024)

## Case on the Constitutionality of the Amendments to the Law Governing Legislative Yuan's Power and the Criminal Code



**#Checks and Balances**

**#Seperation of Powers**

**#Liability of the Executive**

**#Individual Liberty**

**#Duty of the Head of State**

**#Legislative Power of Enquiry**

Original Case Assignment No.: 113-Hsien-Li-1

Argued on August 6, 2024.

Decided and announced on October 25, 2024.

### Background of the Case

On May 28, 2024, the Legislative Yuan passed the amendment bill to the Law Governing Legislative Yuan's Power (hereinafter "LGLYP") and the Criminal Code. The bill amends forty-three articles of the LGLYP and one article of the Criminal Code. The amendments mainly expanded or strengthened the Legislative Yuan's functions in hearing the President's State of the Nation Report, conducting parliamentary questioning (interpellation), setting up investigation committees or taskforces, and holding congressional hearings. The Executive Yuan deemed some of the provisions unfeasible and requested the Legislative Yuan to reconsider the amendment bill. On June 21, 2024, the Legislative Yuan upheld the original bill by majority vote in a plenary session, denying the Executive Yuan's request to reconsider. The newly amended provisions were thus implemented on June 26, 2024.

Fifty-one members of the Legislative Yuan (all from the Democratic Progressive Party, which is minority party in the legislature but the ruling party in the executive branch) believed that the amendment bill was unconstitutional because of its violation of the separation of powers and flaws in the legislative process through which it was enacted. The legislators filed a petition with the TCC as (Group) Petitioner I on June 26, 2024. The Executive Yuan, President Lai Ching-te, and the Control Yuan each filed a petition challenging the constitutionality of the amendments in their competence as Petitioners II, III, and IV. The petitioners also motioned the TCC for a preliminary injunction to suspend the implementation of the amendments.

On July 10, 2024, the TCC ordered a preliminary injunction to suspend the implementation of the amended provisions, citing the protection of fundamental rights of the people and the avoidance of irreparable harm to



the public interest. The petitions were consolidated and later argued on August 6, 2024. Justice Tzung-Jen TSAI authored this Judgment. One concurring opinion, five opinions concurring in part and dissenting in part, and three opinions dissenting in part were filed.

Given the case's sensitive nature, the July 10, 2024 preliminary injunction order (113-Hsien-Chan-Tsai-1) was initially issued *per curiam*—with authorship withheld until the judgment was announced.

## Decision of the Court

The Taiwan Constitutional Court (TCC) ruled that the disputed amendments' legislative process, though flawed, did not fundamentally undermine its legality, which requires transparency and democratic deliberation.

The TCC ruled that amendments of the LGLYP allowing parliament to invite the President for a State of the Nation Report are constitutional inasmuch as the invitation is not mandatory. The Legislative Yuan assigning topics to such Report would exceed its competence.

The TCC further elaborated that the prohibition of “counter-questioning” in the parliament is constitutional so long as the term is interpreted as the questioned officials evading parliamentary questioning by posing their own questions. LGLYP provisions imposing duties on questioned officials and granting powers on the session chairperson were declared partly unconstitutional for overstepping. The TCC ruled that the legislature does not have the power to force officials to attend in order to be questioned. The TCC also ruled that compelling attendance or

responses through fines, penalties, or disciplinary measures exceeds the legislative competence.

The Legislative Yuan may determine procedures for vetting nominees whose appointment requires its consent, but must not exceed its constitutional mandate, as the vetting power is subsidiary to its consenting powers. Fining nominees who have been determined, by a plenary sitting, as providing false statements or concealing information, is unconstitutional for overstepping the legislature's consenting powers. Written responses to qualification questions must be voluntary, and inquiries by individual legislators or party caucuses cannot be directly posed to the nominees. Requiring affidavits to verify the authenticity of documents is constitutional, but requiring affidavits to vouch for professional/evaluative statements or the completeness of documents exceeds the Legislative Yuan's consenting powers.

Further supplementing J.Y. Interpretation No. 585, the TCC pointed out that the Legislative Yuan's *ex officio* investigative power is subsidiary to its competence and must align with the separation of powers and checks and balances. The TCC also ruled that the Legislative Yuan cannot crudely delegate its investigative power to committees—the purpose, scope of investigation, and requirements to request civilian cooperation must be specifically authorized. In addition, minority party legislators cannot be precluded from investigation committees. The TCC stated that the following matters fall outside the investigative power of the Legislative Yuan: (1) Individual officials that are conducting their state organ's independent powers; (2) The Executive Yuan's executive privileges; (3) On-going



court cases. The TCC stressed that the investigative powers of the Legislative Yuan and Control Yuan's do not clash with each other, but each must consider the necessity to exercise when they relate to the same case.

The TCC also supplemented that under the Legislative Yuan's investigative powers, the parliament has the power to request and review documents or information and the power to inquire. For the former, the TCC ruled that: (1) The legislature may request documents only from executive agencies via plenary resolutions, not from individual civil servants or civilians; and (2) Civilians have no obligation to provide information. For the latter: (1) Officials have the duty to answer inquiries but should only bear political responsibilities for their answers, while civilians do not have the duty to answer; (2) Civilians shall have the rights to be assisted by counsel or professionals, to refuse to testify, and to not sign an affidavit when subject to an inquiry; (3) The legislature may stipulate a law fining those who unjustifiably refuse to attend.



Full Text in  
Chinese

The TCC ruled that the Legislative Yuan has the power to hold congressional hearings when exercising its constitutional competence. However, under the separation of powers, although executive officials have the duty to attend and answer, they may refuse to disclose certain information for valid reasons, such as national security or protecting rights of a third-party. Such duties of the executive branch are political responsibilities, and shall not be enforced through legal measures such as fines or criminal punishments. The TCC also held that civilians invited to hearings have no constitutional duty to attend and answer. LGLYP provisions imposing excessive restrictions on officials' or civilians' right to be assisted by counsel/professionals during hearings were declared unconstitutional.

Punishing government officials with criminal measures for the offense of contempt of legislature is unconstitutional for lacking a justifiable purpose and being disproportionate. The TCC stressed that such conduct (contempt of the legislature) shall be faced with political, instead of criminal, accountability.

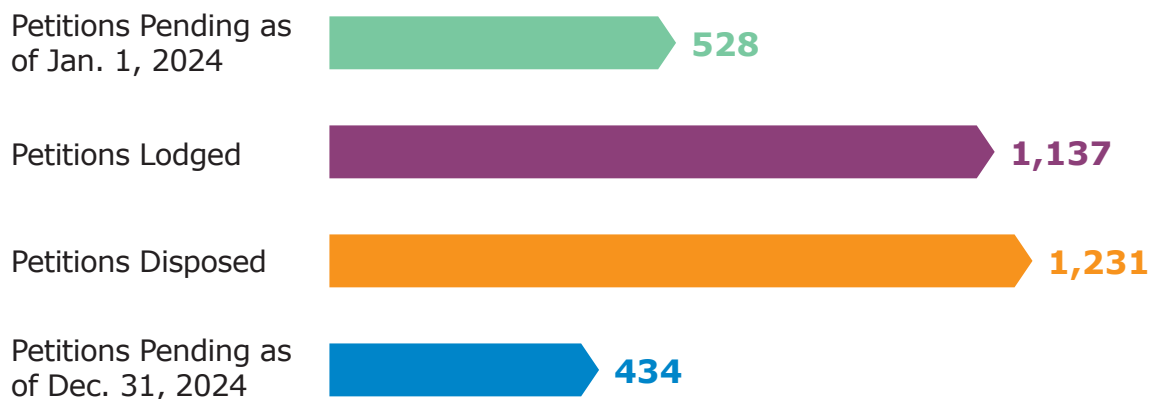




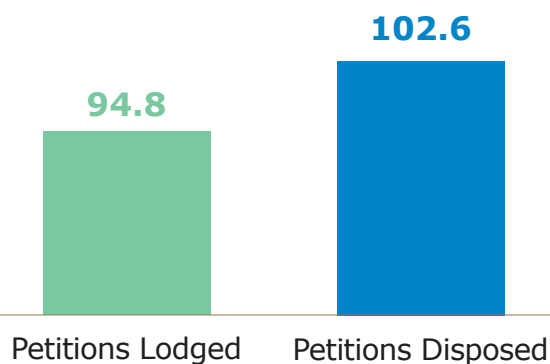
# Statistics



## TCC Caseload in 2024



## Average Numbers of Petitions Lodged and Disposed Per Month Petitions in 2024

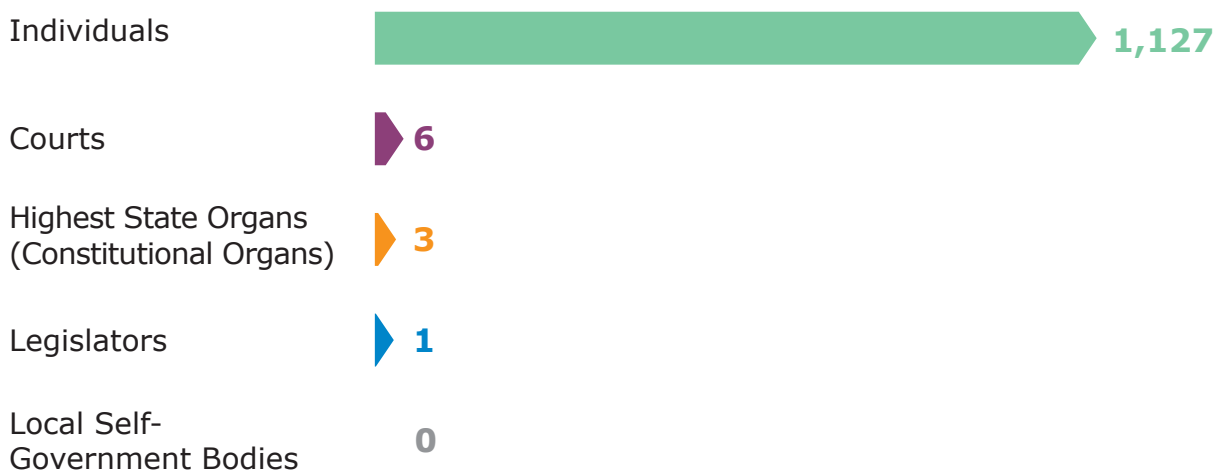




## Petitions Lodged in 2024, by Types of Petitions

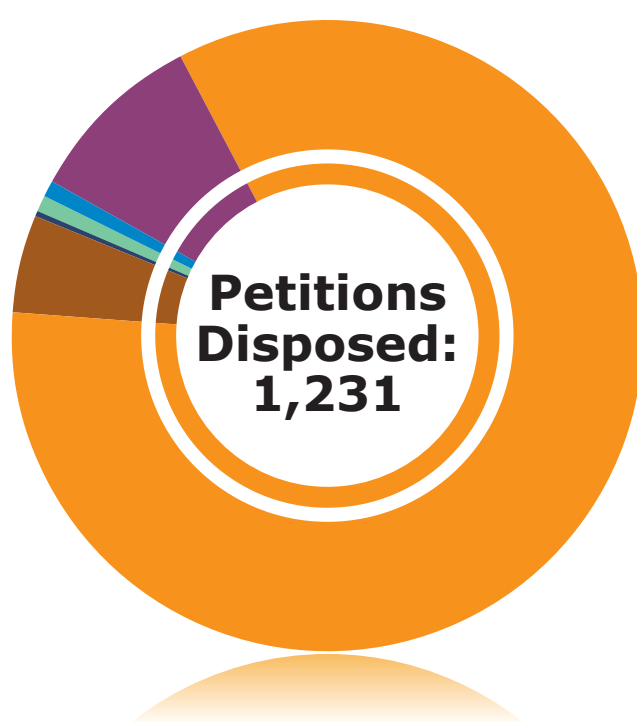


## Petitions Lodged in 2024, by Types of Petitioners





## Ratio of Judgments and Orders on the Merits Rendered in 2024: **10.89% (126)** \*



**83.75%(1,031)**

- Dismissed

**9.34%(115)**

- Consolidated into Judgments or Orders on the Merits

**5.12%(63)**

- Concluded by Orders Other Than Dismissal Orders

**0.89%(11)**

- Judgments Rendered

**0.65%(8)**

- Concluded in Other Ways

**0.24%(3)**

- Withdrawn by Petitioners

**0%(0)**

- Orders on the Merits Rendered\*\*

\* Note: Ratio of Judgments and Orders on the Merits Rendered = (No. of Judgments Rendered + No. of Orders on the Merits Rendered + No. of Petitions Consolidated into Judgments or Orders on the Merits) / (No. of Petitions Disposed – No. of Petitions Concluded by Orders Other Than Dismissal Orders – No. of Petitions Withdrawn by Petitioners – No. of Petitions Concluded in Other Ways)

\*\* "Orders on the Merits Rendered" in the chart does not include the preliminary injunction rulings.





# TCC in Action

Annual Academic Conference

International Engagements

International Constitutional Studies

Guided Tours







# TCC Annual Academic Conference 2024



On December 7, 2024, the Justices of the Taiwan Constitutional Court (TCC) held the TCC Annual Academic Conference of 2024 under the theme “*Principles of Constitutional Review: Review and Future Prospects* [憲法審查原則之回顧與展望].” The Annual Academic Conference, which is a long-standing yearly tradition of the TCC, aims to facilitate dialogues and exchange opinions between practitioners and academics of constitutional justice.

## Opening Remarks

Acting President of the Judicial Yuan and Chief Justice of the TCC, Prof. Dr. Ming-Yan SHIEH, opened the event by introducing the conference theme. He mentioned that the constitutional judiciary had cultivated various reviewing standards when adjudicating individu-

al cases, with which the academics developed the constitutional principles employed during reviews. These principles for review were further renewed through new constitutional cases— concurrent with the change of times and social development. The conference’s theme, “*Principles of Constitutional Review: Review and Future Prospects*,” focused on four constitutional principles: the principle of proportionality, the equality principle, the principle of legal certainty (clarity of the law), and the principle of *lex retro non agit* (non-retroactivity of the law). Through continuous practice, these principles together have constructed a framework for protecting fundamental rights and maintaining the constitutional order. In the face of new international/cross-national challenges such as climate change and AI development, the content of these principles needs to be revitalized so that the constitutionality of State conducts may be reassessed.

Four sessions of the conference encompassed the four aforementioned constitutional principles:

### The First Session



“*The Principle of Proportionality in Retrospect and Prospect: A Review centered on J.Y. Interpretations and TCC Judgments* [比例原則之回顧與展望——以大法官解釋及憲法法庭判決為中心],” was presented by Professor Hsing-An CHEN (School of Law, National Chung Hsing University). Professor CHEN’s presentation analyzed the application of the principle of proportionality in constitutional cases since 2016. His presentation was joined by discussant Professor Ning-Hsiu LEE (Chinese Culture University Department of Law). Acting President SHIEH chaired this session.





## The Second Session



*“The Equality Principle in Retrospect and Prospect [平等原則之回顧與展望],”* was presented by Professor Nai-Yi SUN (College of Law National Taiwan University). Professor SUN’s presentation reviewed the equality principle’s content and review standards in practice. She further examined whether the principles in practice put international human rights law into consideration. Her presentation was joined by discussant Associate Professor Chin-Wen WU (College of Law, National Chengchi University). Justice Tai-Lang LU chaired this session.





### The Third Session



*“The Retrospect and Prospect of the Principle of Legal Certainty in Criminal Laws in Constitutional Jurisprudence [刑罰規範之明確性審查：釋憲實務之回顧與前瞻],”* was presented by Professor Chih-Jen HSUEH (College of Law National Taiwan University). Professor HSUEH’s presentation revisited the application of the principle of legal certainty in criminal laws (*nullum crimen, nulla poena sine lege certa*) in constitutional reviews. He further proposed two reviewing criteria (regulatory density and content clarity) for future application. His presentation was joined by discussant Associate Professor Ai-Er CHEN (National Taipei University Department of Law). Justice Hui-Ching YANG chaired this session.



## The Fourth Session



*“Retrospect and Prospect of the Principle of Non-retroactivity of the Law—Constructing An Observation Method Based on Legal Evaluations Given to Existing Facts [法律不溯及既往原則之回顧與展望—建構既存事實已取得之法律評價之觀察方法],”* was presented by Professor San-Chin LIN (School of Law, Soochow University), in which he criticized the current constitutionality criteria on this issue: whether the law has a genuine retroactive effect (*echte Rückwirkung*). By categorizing constitutional cases involving retroactive laws, Professor LIN proposed a new indicant for retroactive legal effects to appropriately evaluate the impact brought by new laws. His presentation was joined by discussant Professor Ching-Hsiou CHEN (School of Law, Soochow University). Justice Tzung-Jen TSAI chaired this session.

## Dialogues

Conference participants engaged productively in different aspects of each session, maintaining the tradition of facilitating dialogues between law practitioners and academics of constitutional justice and relevant fields.





## Closing Remarks

Justice Tai-Lang LU closed the conference by summarizing the four conference sessions. He noted that the four constitutional principles discussed today were not only founded on Taiwan's socio-economic and cultural background but have also captured the essence of European and Anglo-American legal theories. Such a phenomenon is a characteristic of Taiwan's constitutional jurisprudence. He commended the fruitful exchanges during the conference, which could be further cited as important references when adjudicating future constitutional cases.



Speech Transcripts  
(Chinese)





# International Engagements

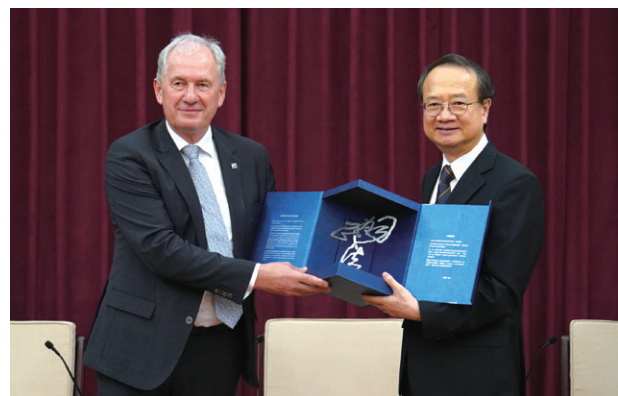
## The Visit of the Delegation of the Constitutional Court of the Czech Republic



From left to right: Justice Po-Hsiang YU, Justice Chung-Wu CHEN, Justice Fu-Meei JU, Justice Tsai-Chen TSAI, Dr. Pavel Dvořák (Head of the External Relations and Protocol Department of the Czech Constitutional Court), Secretary General Vlastimil Göttinger (Czech Constitutional Court), Vice-President Vojtěch Šimíček (Czech Constitutional Court), President Josef Baxa (Czech Constitutional Court), Vice-President Kateřina Ronovská (Czech Constitutional Court), President and Chief Justice Tzong-Li HSU, Vice President Justice Jeong-Duen TSAI, Justice Chih-Hsiung HSU, Justice Jui-Ming HUANG, Justice Sheng-Lin JAN, Justice Jau-Yuan HWANG, Justice Ming-Yan SHIEH, Justice Tzung-Jen TSAI, and Asst. Prof. Chi CHUNG (Translator of this event, National Chengchi University).

On April 16, the Judicial Yuan and the Taiwan Constitutional Court (TCC) welcomed the visit of the delegation of the Constitutional Court of the Czech Republic. This visit was the continuity of the official bilateral exchanges between the TCC and its Czech counterpart that started last year, when then President of the Judicial Yuan and Chief Justice Tzong-Li HSU was invited to lead a delegation to visit the Constitutional Court of the Czech Republic in June 2023 by then Czech Constitutional Court President Pavel Rychetský (current Emeritus Justice since 2023).

To strengthen exchanges between the constitutional judiciaries of Taiwan and the Czech Republic, the Justices of the TCC in 2024 invited President JUDr. Josef Baxa, Vice-President doc. JUDr. Vojtěch Šimíček, Vice-President prof. JUDr. Kateřina Ronovská, Secretary General JUDr. Vlastimil Göttinger, and Dr. Pavel Dvořák (Head of the External Relations and Protocol Department of the Czech Constitutional Court) of the Constitutional Court of the Czech Republic to visit Taiwan from April 15 to 18. On the afternoon of April 16, the delegation met with then Chief Justice Tzong-Li HSU, then Vice President Justice Jeong-Duen TSAI, then Justice Chih-Hsiung HSU, then Justice Jui-Ming HUANG, then Justice Sheng-Lin JAN, then Justice Jau-Yuan HWANG, Justice Ming-Yan SHIEH, Justice Tzung-Jen TSAI, Justice Tsai-Chen TSAI, Justice Fu-Meei JU, Justice Chung-Wu CHEN, Justice Po-Hsiang YU, and Director General of the TCC Judge Hao-Ching YANG. Their meeting commenced with President Baxa expressing his condolences on the earthquake that struck Hualien previously on April 3. President Baxa also commended the resilience that Taiwanese people have shown in the wake of this natural disaster. In response, then Chief Justice HSU thanked President Baxa for his care and hoped that the two constitutional adjudication institutions might engage in regular academic exchanges in the future.



Chief Justice Tzong-Li HSU presenting the sculpture "Judicature for People" (by calligrapher Chu Chen Nan) to President Josef Baxa.



The Czech Constitutional Court delegation visiting the TCC's judges' corridor that exhibits photos of former Justices.







After the meeting, President Baxa delivered a speech under the title “The Constitutional Court of the Czech Republic Through the Prism of Legal History.” In his speech, President Baxa pointed out that in addition to the intrinsic function of serving as an arbiter, the constitutional court also assumes interpretative and protective duties, navigating between honoring the decisions of other courts and safeguarding the fundamental rights and freedoms of individuals. President Baxa noted that the experiences of constitutional courts are unique and non-transferable, which is why it is extremely valuable that they can communicate horizontally with each other.

In terms of the position of the constitutional court, President Baxa provided some important viewpoints in his speech. For instance, he mentioned that “constitutional court judges must not adjudicate with popularity in mind but rather with justice as their guiding principle,” and that they “must not be swayed by the potential repercussions of (...) decisions, the outcry of politicians, headlines, or crowds gathered beneath (...) windows.” Furthermore, he also stated that the constitutional court should be aware of its subsidiary role in addressing political issues, and decide with the full weight of its authority, rationally, impartially, and with solid argumentation when called upon to decide. President Baxa also provided three concrete verdicts to illustrate the evolution of Czech society and the Czech Constitutional Court throughout the past three decades, namely, the verdicts concerning the communist legacy, the Lisbon Treaty, and adoption within registered partnerships. President Baxa ended his speech by stressing that the constitutional court must be the supreme interpreter of the constitution; it must be apolitical and independent—with constitutionality as its sole benchmark.



After the speech, the delegation and Justices of the TCC engaged in friendly dialogues. Then Chief Justice HSU closed the session by thanking the delegation for sharing the Czech Constitutional Court's experience during democratization. He also expressed his utmost respect toward the Czech Constitutional Court's unwavering persistence and safeguarding of the constitutional principles and values during phases of transformation. He concluded that the shared values between the two Courts today are encouraging and meaningful in a historical sense, and hoped that TCC and the Constitutional Court of the Czech Republic would continue to strengthen their exchanges, share their experiences of adjudication, and both safeguard the values of constitutional democracy in the future.



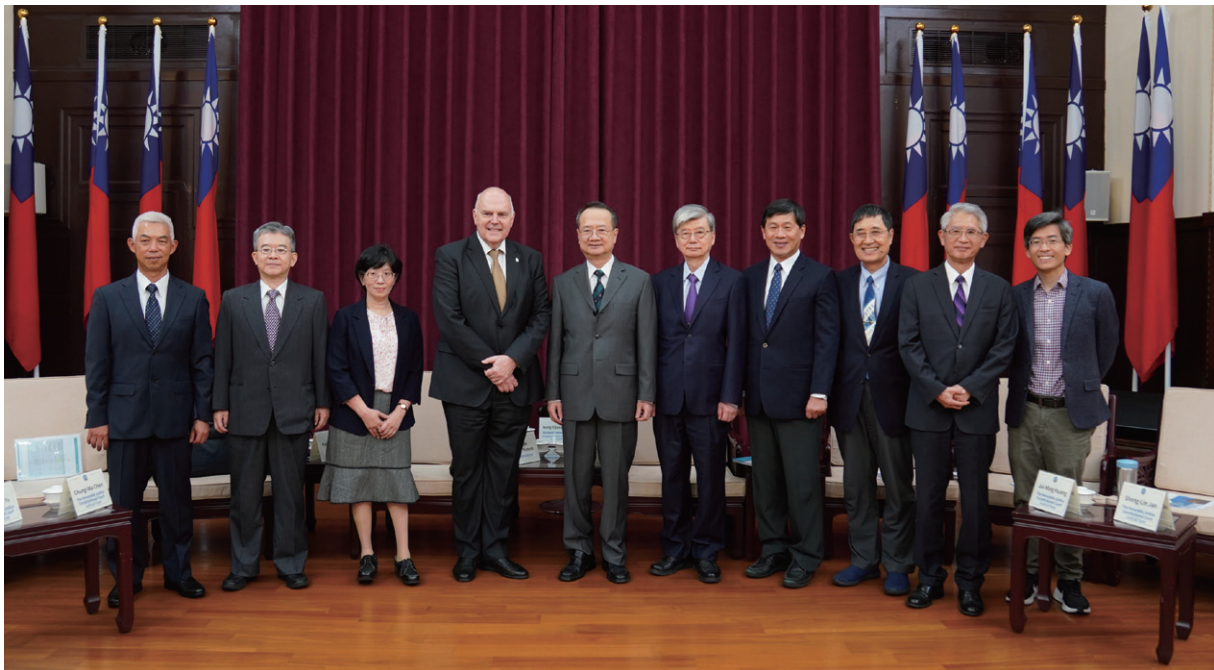
The delegation visiting the Judicial Museum in Taiwan, during which a volunteer guide introduced them to the legal history underlying the construction of this historical site.



The delegation engaged with further exchanges with TCC Justices over dinner, which was also graced by Representative Mr. David Steinke of the Czech Economic and Cultural Office in Taipei (third from the left of the back row).



## The Visit of Judge Prof. dr. Danny Pieters of the Belgian Constitutional Court



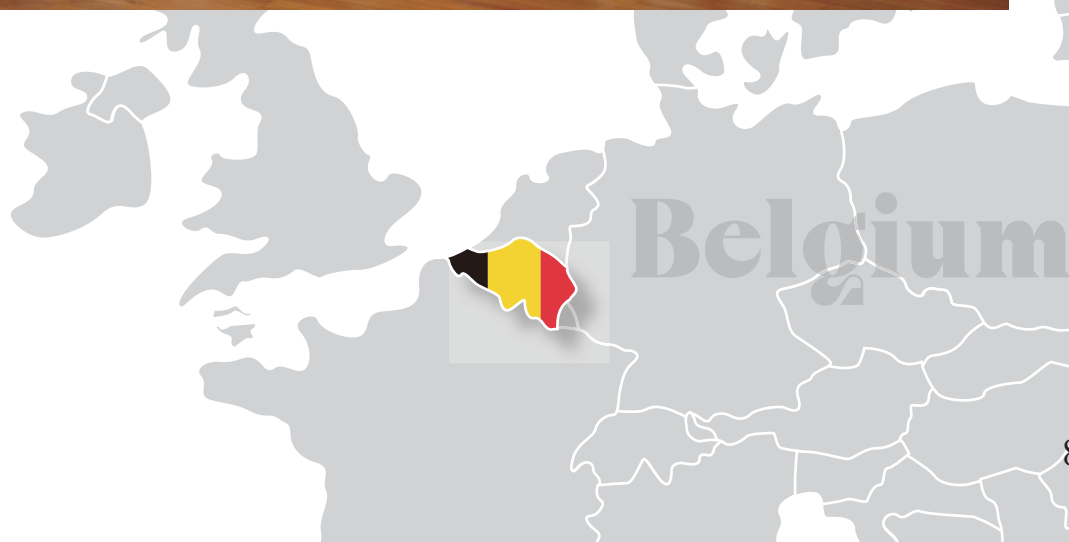
From left to right: Justice Po-Hsiang YU, Justice Chung-Wu CHEN, Prof. Nai-Yi SUN, Prof. dr. Danny Pieters, President & Chief Justice Tzong-Li HSU, Vice President Justice Jeong-Duen TSAI, Justice Jui-Ming HUANG, Justice Sheng-Lin JAN, Justice Ming-Yan SHIEH, and Assistant Research Fellow Dr. iur. Yung-Djong SHAW.



On May 2, the Judicial Yuan and the Taiwan Constitutional Court (TCC) welcomed the visit of Prof. dr. Danny Pieters, Judge of the Constitutional Court of Belgium (accompanied by National Taiwan University College of Law Professor Nai-Yi SUN and Assistant Research Fellow Dr. iur. Yung-Djong SHAW of the Institute of European and American Studies at Academia Sinica).



During his visit, Judge Pieters delivered a speech under the title “The Belgian Constitutional Court, its functioning and challenges.” His speech first gave an overview of Belgium’s political reality from the perspective of historical developments and cultural/linguistic communities. He further introduced the Belgian Constitutional Court’s composition and competences, accompanied by an introduction to the different types of constitutional reviews. Judge Pieters concluded his speech by illuminating the Belgian Constitutional Court’s work and challenges, including its relation with other higher jurisdictions (both national and European), the need for German translation, and issues posed by limited numbers of judges and law clerks.







## **Taiwan Constitutional Court Delegation Visits the European Court of Human Rights**



On August 27, Tzong-Li HSU, the then President of the Judicial Yuan and Chief Justice (retired on October 31, 2024), along with Justices Chih-Hsiung HSU (who retired on October 31, 2024), Jui-Ming HUANG (who retired on October 31, 2024), Ming-Yan SHIEH, Tsai-Chen TSAI, Fu-Meei JU, and Po-Hsiang YU, visited the European Court of Human Rights in Strasbourg, France. This marked the first official visit of the Taiwan Constitutional Court (TCC) to the European Court of Human Rights. The delegation was welcomed by Judge Ivana Jelić (Montenegro), the then President of Section (later Vice-President of the ECHR since November 2024), Judge Erik Wennerström (Sweden), and Section Registrar Victor Solovetichik. During their visit, a roundtable discussion took place, covering a variety of topics including interpretive methodologies, the right to privacy, the right to a fair trial in the digital age, the extent of the margin of appreciation, the boundaries of the right to life in cases of assisted suicide, and the right to family life, particularly concerning child custody matters.



The delegation actively participated in this dynamic discussion, sharing their perspectives and considerations. At the conclusion of the meeting, President Jelić emphasized that the exchange of ideas among judges is essential for the development of the global rule of law. Judge Wennerström reiterated the importance of legal researchers learning from one another. Chief Justice HSU echoed these sentiments by stating that he expected further and normalized exchanges in the future, which would enrich the contemporary meaning of the rule of law.

# European Court of Human Rights







## **Taiwan Constitutional Court Delegation Visits the Belgian Constitutional Court and Raad van State of the Netherlands**



President Lavrysen and Judges showing the delegation the classic reception room, situated inside the Belgian Constitutional Court.

On August 26, a delegation of the TCC comprising Justice Jui-Ming HUANG, Justice Chih-Hsiung HSU, Justice Ming-Yan SHIEH, Justice Tsai-Chen TSAI, Justice Fu-Meei JU, Justice Po-Hsiang YU and Research Judge Yi-Yi LEE, visited the Belgian Constitutional Court. This marks the first official visit of the TCC to the Belgian Constitutional Court. President Luc Lavrysen, Judge Danny Pieters, Judge Emmanuelle Bribosia, Judge Willem Verrijdt, Judge Magali Plovie and Referendaire Jan Theunis welcomed the delegation.





TCC delegation in the Belgian Constitutional Court courtroom.

Following a tour around the Court, President Lavrysen commenced the roundtable meeting by welcoming the delegation in the Deliberation Room. This meeting featured an in-person discussion between the incumbent members of two constitutional courts from different continents following Judge Danny Pieters' earlier visit to Taiwan. President Lavrysen introduced the evolution of the Belgian Constitutional Court from its establishment in 1983 as the 'Court of Arbitration' to the transition into the Constitutional Court in 2007. The task of the Constitutional Court is, as its title suggests, to resolve constitutional disputes. There are twelve Judges within the Court, six French-speaking and six Dutch-speaking. Half of the Judges are drawn from the Parliament, while the other half are from academia, the ordinary courts, or the law clerks of the Constitutional Court. The predominant types of cases that the Belgian Constitutional Court looks at are Actions for annulment and Preliminary questions raised by Judges. For every incoming case, there will be one Judge-rapporteur who works in pairs with his or her French-speaking or Dutch-speaking counterpart. Together with their legal secretaries, they prepare the case.



Judge Emmanuelle Bribosia introducing the in-use courtroom and sharing details of court hearing practices to the delegation.

# Belgium



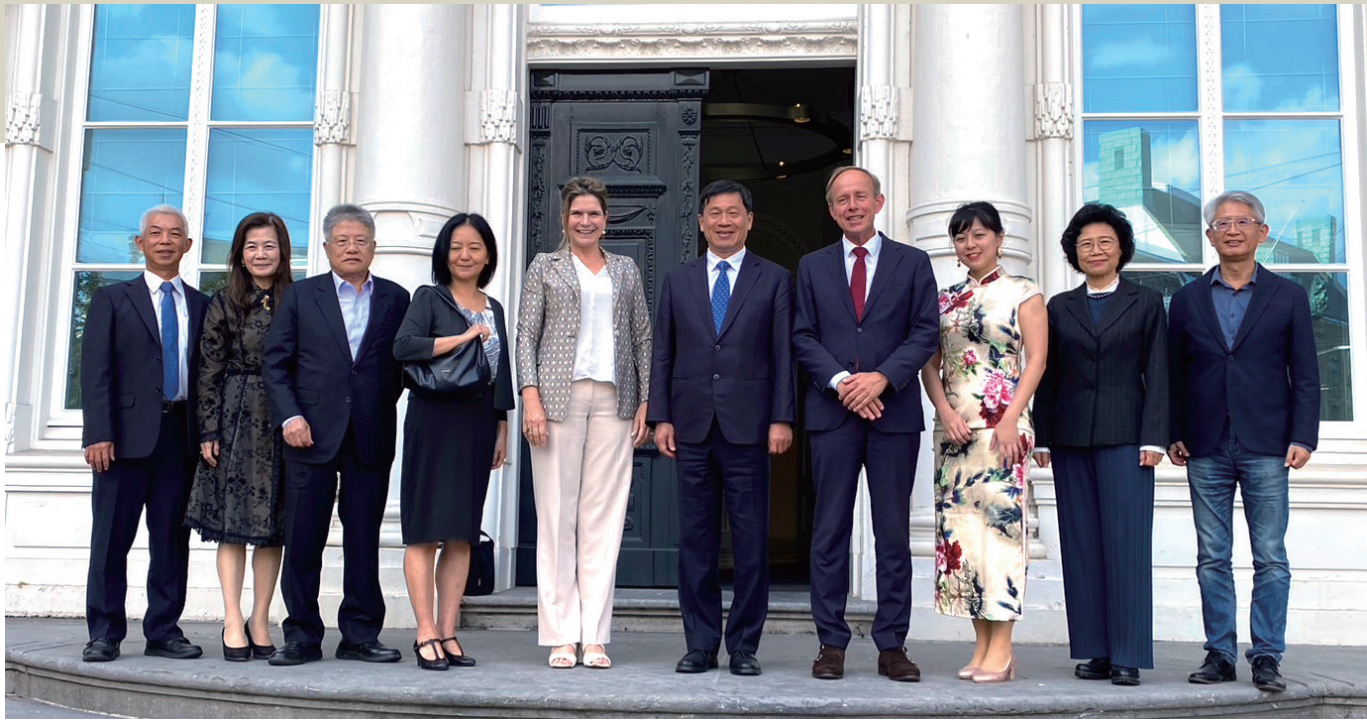


Afterwards, Justice Jui-Ming HUANG introduced the evolution of the competence of constitutional review enjoyed by the Taiwan Constitutional Court. He also discussed the history in which such competence evolved and the role that the Justices play in fostering the democratization of Taiwan. Research judge Yi-Yi LEE continued to present an overview of the full competence of the TCC, leading cases, and the recent participation in international activities, including the TCC's contribution to the CODICES database run by the Venice Commission.

After exchanging insights, the TCC delegation had a productive discussion with the Belgian judges. They discussed the social and political background of how both courts exercise their constitutional review competencies, how the Judges perceive their interaction with the Parliament and the mainstream opinions in society. The visit concluded with President Lavrysen, on behalf of the Belgian Constitutional Court, and Justice Jui-Ming HUANG, on behalf of the Taiwan Constitutional Court, exchanging souvenirs from both courts as the symbol of friendships and further collaborations in the future.







On August 30, TCC delegation visited the Raad van State of the Netherlands. The delegation members were welcomed by Councilors Kees van der Staaij and Casandra Lange. Councilor Kees van der Staaij introduced the remarkable history of Raad van State of the Netherlands, one of the oldest operating institutions in Europe (since 1531). Raad van State comprises the Advisory Division and the Administrative Jurisdiction Division (the Supreme Administrative Court). The Advisory Division is tasked with producing independent, non-politically-biased analyses of problems regarding policies, constitutional and legal analysis, feasibility assessments and analyses of the consequences for courts and legal practice. There are fourteen full-time or part-time Councilors, assisted by thirty-five academic support staff (mostly lawyers). If a negative analysis is concluded, although non-binding, the government must justify its proposed bill in the Parliament.

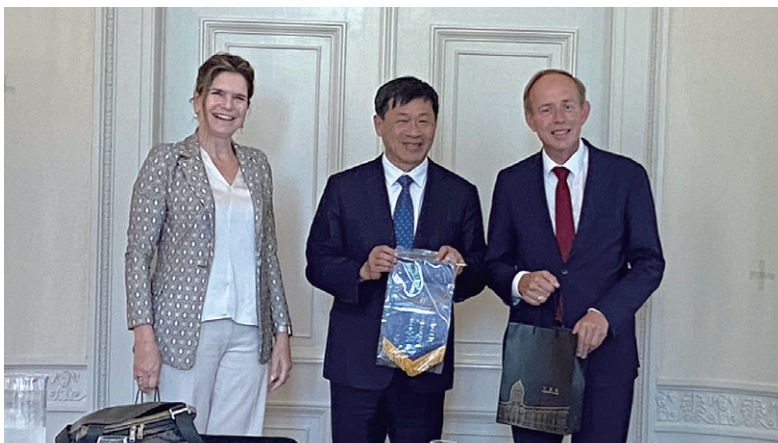


Netherlands





Councilor Cassandra Lange introduced the Administrative Jurisdiction Division and the brief background behind the distinctive Dutch Constitution, which bans the court from reviewing the constitutionality of any bill passed by the Parliament. This, however, reflected the checks and balances to prevent the power of the King, the representative of the Raad van State, from overriding the legislative power. Against this background, the Dutch judiciary still exercises the competence to apply the fundamental rights standards within a fine line. In this regard, the European Court of Justice undertakes part of the function of a constitutional court in the Dutch context.



On the same topic, the Taiwan delegation shared the constitutional source and the evolution of the competence of the TCC to interpret the Constitution over seventy years. The evolution began with the stage when the collegial body of the Justices was named ‘the Council of Grand Justices’ with the explicit competence of interpreting the Constitution, which was sometimes comprehended as advisory. However, a strong judicial characteristic has persisted throughout the Interpretations made by the TCC. Today, the Taiwan Constitutional Court is undoubtedly a fully-fledged judicial body with the competence to adjudicate the constitutionality of legislation and to answer preliminary questions raised by judges in ordinary courts. The delegation and the Councilors had a fruitful exchange of opinions regarding the relevant constitutional, legal, and historical issues.

The visit concluded with an exchange of gifts as a symbol of friendship, followed by a tour of the courtrooms inside the Raad van State







# International Constitutional Studies

## Exchanges with International Experts and Academics



On January 9, the Judicial Yuan and the Taiwan Constitutional Court (TCC) welcomed the visit of the delegation of the Faculty of Law, Palacký University Olomouc. The delegation members included Dean JUDr. Václav Stehlík, Vice-Dean JUDr. Martin Faix, Prof. Dr. I-Hsun Sandy Chou, and Mr. Aaron Milchiker. During the delegation's visit, Dean Stehlík and Vice-Dean Faix delivered a speech under the title "Transition to Democracy in the Czech Republic:

from totality to the EU membership." Their speech illuminated the intricate facets of the Czech Republic's transition from communist rule to democracy. In the first half of the speech, Vice-Dean Faix focused on the part of transitional justice and the prosecution of crimes during the communist past. Then, Dean Stehlík further elaborated on the Czech Constitutional Court's interaction with the EU law after the Czech Republic's reintegration into the democratic structure of the European Union. During the speech session, the Justices and the speakers exchanged different practices and viewpoints on transitional justice in Taiwan and the EU, with a focus on the difficulties in identifying the victims and the nuances between different measures of compensation or restitution.



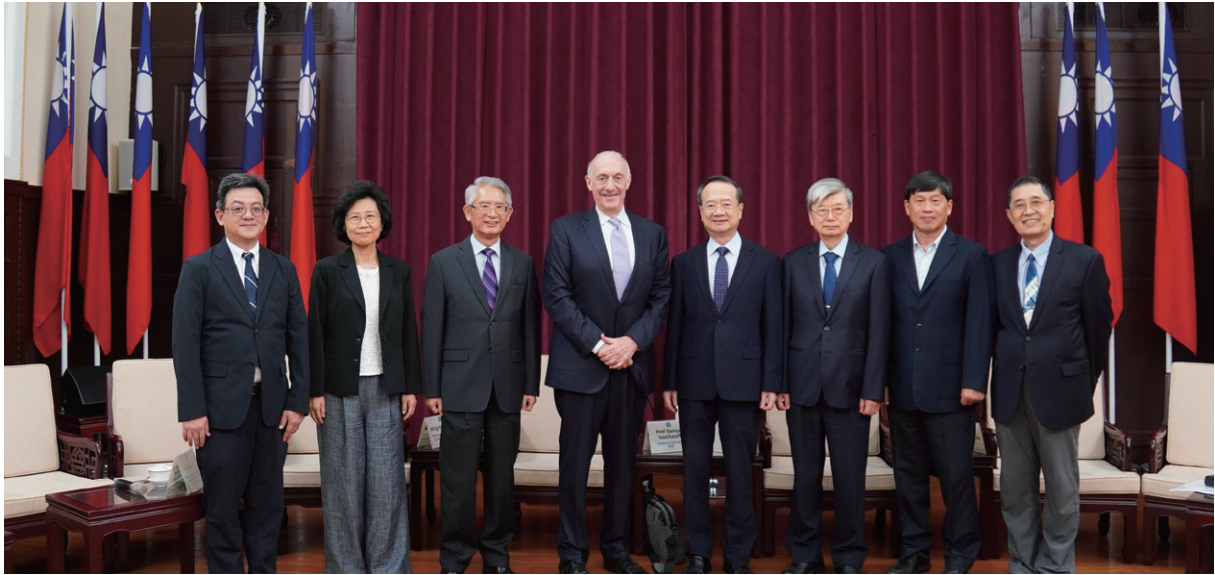




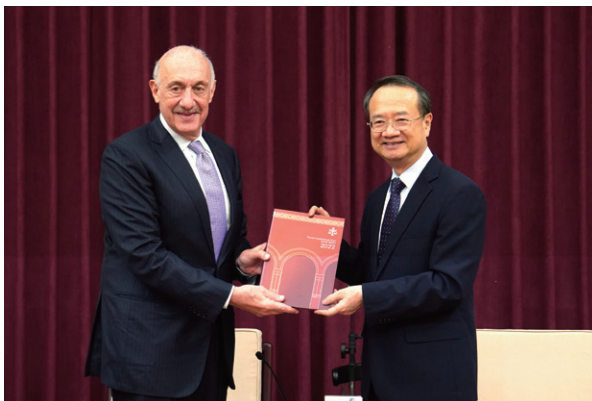
On May 30, 2024, the Judicial Yuan and the Taiwan Constitutional Court (TCC) welcomed the visit of Prof. Aileen Kavanagh (School of Law, Trinity College Dublin), Prof. Dinesha Samararatne (Faculty of Law, University of Colombo), Prof. Tomás Daly (Melbourne Law School), and Research Professor Oran Doyle (Institutum Iurisprudentiae Academia Sinica). On behalf of the Judicial Yuan and the TCC,

the President of the Judicial Yuan & Chief Justice Tzong-Li HSU expressed sincere welcome to the scholars upon their meeting. Their meeting was accompanied by Justice Jui-Ming HUANG, Justice Ming-Yan SHIEH, Justice Po-Hsiang YU, Director-General of the TCC Judge Hao-Ching YANG, and Research Professor Chien-Chih LIN of the Institutum Iurisprudentiae Academia Sinica (translator of this event). During their meeting, the scholars and TCC officials engaged in a short talk on the topic of constitutional adjudication and constitutional theories.





On August 15, 2024, the Judicial Yuan and the Taiwan Constitutional Court (TCC) welcomed the visit of Prof. Samuel Issacharoff, Bonnie and Richard Reiss Professor of Constitutional Law at the New York University School of Law. He was accompanied by Research Professor Yen-Tu SU of Institutum Iurisprudentiae Academia Sinica. During his visit, Prof. Issacharoff delivered a speech under the title “Adjudicating the Electorate: Judicial Oversight of Democratic Competition,” with the help of consecutive interpretation of Research Professor SU. Prof. Issacharoff’s speech focused on court-driven constitutional oversight of elections and political competitions from the vantage point of comparative constitutional law. Prof. Issacharoff shared with the audience three types of court-driven oversight mechanisms: (1) Curtailing anti-democratic actors through personnel or part bans; (2) De-escalation by decree, notably the aspect of de-fanging and de-funding; and (3) Structural reinforcement by reinforcing the rules of the game or leveling the playing field. Various comparative law cases from the US, Germany, India, Korea, Taiwan, and Mexico were given to illustrate the three types of mechanisms. The Justices of the TCC exchanged their opinions with Prof. Issacharoff after his speech.











## Guided Tours

















# Appendices

The background of the page features a photograph of a staircase with a light-colored wall and a dark wooden baseboard. A large, semi-transparent geometric overlay, consisting of several overlapping triangles in shades of gray and white, is positioned on the right side of the page, partially obscuring the staircase image.





**Appendix I :**

# History of the Taiwan Constitutional Court

**1947**

**01/01**

The Constitution of the ROC was promulgated in China. The competence to interpret the Constitution was bestowed on the Judicial Yuan, which should be composed of Justices nominated by the President of the Republic and approved by the Control Yuan.

**12/25**

The Constitution of the ROC entered into force. The Judicial Yuan Organization Act was promulgated on the same day and came into force six months later, stipulating the Council of seventeen Justices, which was chaired by the Chief Justice.

**1948**

**08/02**

The establishment of the Council of Grand Justices.

**09/15**

The first Council of Grand Justices held.

**09/16**

The promulgation of the Rules of the Council of Grand Justices.

**1949**

**01/06**

The announcement of J.Y. Interpretations Nos. 1 and 2.

**1952**

**04/14**

The first Council of Grand Justices held after the relocation of the ROC government to Taiwan.

**1957**

**12/13**

The nine-year term of office of the Grand Justices stipulated in the Judicial Yuan Organization Act.

1958

**11/06**

The first J.Y. Interpretation initiated by individuals announced (J.Y. Interpretation No. 117).

1966

**07/12**

The Council of Grand Justices Act, promulgated and came into force on the same day, entailed the petition of interpretation by individuals.

1992

**05/15**

The second amendment to the Constitution entered into force. All (Grand) Justices shall sit as the Constitutional Court to hear the cases concerning the dissolution of unconstitutional political parties.

**12/21**

The establishment of the Department of Clerks.

1993

**02/03**

The Constitutional Court Procedure Act of 1993 entered into force.

**10/22**

Construction of the Constitutional Courtroom completed.

**12/23**

The first oral argument held in the Constitutional Courtroom— later announced as J.Y. Interpretation No. 334.



**1999**

**02/01**

Chief Justice Yueh-Sheng WENG, as the first President of Judicial Yuan holding the office of Justice, took office.

**2000**

**04/25**

The sixth amendment to the Constitution entered into force. The appointment of Justices was hereafter the nomination by the President of the Republic followed by the agreement of the Congress.

**2003**

**10/01**

The number of the Justices was reduced from seventeen to fifteen. The Chief Justice is thereafter the President of the Judicial Yuan. The term of office of the Justices is thereafter reduced from nine to eight years.

**2005**

**06/10**

The seventh amendment to the Constitution entered into force. The competence of the TCC was expanded to include the jurisdiction to hear the impeachment of the President and the Vice President cases.

**2007**

**01/10**

Chief Justice In-Jaw LAI took office.

**2010**

**10/13**

Chief Justice Hau-Min RAI took office.

**2016**

**01/06**

Chief Justice Tzong-Li HSU took office.



2018

10/01

Seventieth anniversary of the TCC.



12/18

The CCPA was passed by the Legislative Yuan.

2019

01/04

President of the Republic Ing-Wen TSAI promulgated the CCPA of 2022.

2021

12/24

The announcement of the last J.Y. Interpretation No. 813

2022

01/04

The Constitutional Court Procedure Act (CCPA) of 2022 entered into force.



01/04

Launching of the Taiwan Constitutional Court website.



2024

04/16




The Delegation of the Constitutional Court of the Czech Republic visited Taiwan Constitutional Court.



**Appendix II :**

# List of Cases Decided in 2024

Date	Case No.	Case Name	Oral Argument (In Mandarin)
2024/01/26	113-Hsien-Pan-1	Case on the Extended Confiscation of Criminal Proceeds in Narcotic Cases	
2024/03/15	113-Hsien-Pan-2	Case on Life Sentence Prisoners Serving Remaining Sentence after Revocation of Parole	
2024/04/26	113-Hsien-Pan-3	Case on the Criminalization of Public Insult I	
2024/04/26	113-Hsien-Pan-4	Case on the Criminalization of Public Insult II	
2024/05/24	113-Hsien-Pan-5	Case on the Criminalization of Insulting a Public Official or the Discharge of Public Duties	
2024/05/31	113-Hsien-Pan-6	Case on the Constitutionality of Height Requirements for the Firefighter Entrance Exam	

Date	Case No.	Case Name	Oral Argument (In Mandarin)
2024/08/09	113-Hsien-Pan-7	Case on Accruing Previous Seniority in Salary Assessment for Certified Substitute Teachers	
2024/09/20	113-Hsien-Pan-8	Constitutionality of the Death Penalty Case	
2024/10/25	113-Hsien-Pan-9	Case on the Constitutionality of the Amendments to the Law Governing Legislative Yuan's Power and the Criminal Code	
2024/10/28	113-Hsien-Pan-10	Case on the Standard for Medical Fees	
2024/10/28	113-Hsien-Pan-11	Case on the Calculation of Adjusted Taxable Gift in Estate Tax	

<sup>2</sup>Previously argued under the case name "Case on the Extended Confiscation of Criminal Proceeds."

<sup>3</sup>Previously argued under the case name "Case on the Criminalization of Public Insult."

<sup>4</sup>Previously argued under the case name "Case on the Criminalization of Insulting a Public Official."

<sup>5</sup>Previously argued under the case name "Case on the Constitutionality of Height Requirements for General Police Officers Entrance Exam."

<sup>6</sup>Previously argued under the case name "Case on Including Previous Job Tenure in Salary Assessment for Elementary/Junior High School Substitute Teachers."

<sup>7</sup>Previously argued under the case name "Case on the Constitutionality of the Amendments to the Law Governing the Legislative Yuan's Power and Article 141-1 of the Criminal Code."





### Appendix III :

## Beauty of the Judicial Office Building

The Judicial Office Building was designed by Kaoru Ide, Chief Architect of the Taiwan Governor-General Office during the middle stage of the Japanese colonial period. The building was constructed by local firms, Katsura Shokai Corporation and Ikedagumi Corporation, during 1929-1934. Once a three-story building, a fourth floor was added in the 1970s. Each floor contains about 65,000 square feet. The Ministry of the Interior designated the building as a national heritage site in July 1998.



**P64**

The coffered cornflower blue ceiling in the third-floor Deliberation Room is decorated with white moldings and tartrazine carvings featuring chrysanthemum and bamboo weaving motifs.



**P93**

VIP Room on the third floor, where meetings with esteemed guests are often held, exhibits various arts, including the renowned “Judicature for People” by calligrapher Chu Chen Nan.



**P40**



**P96**

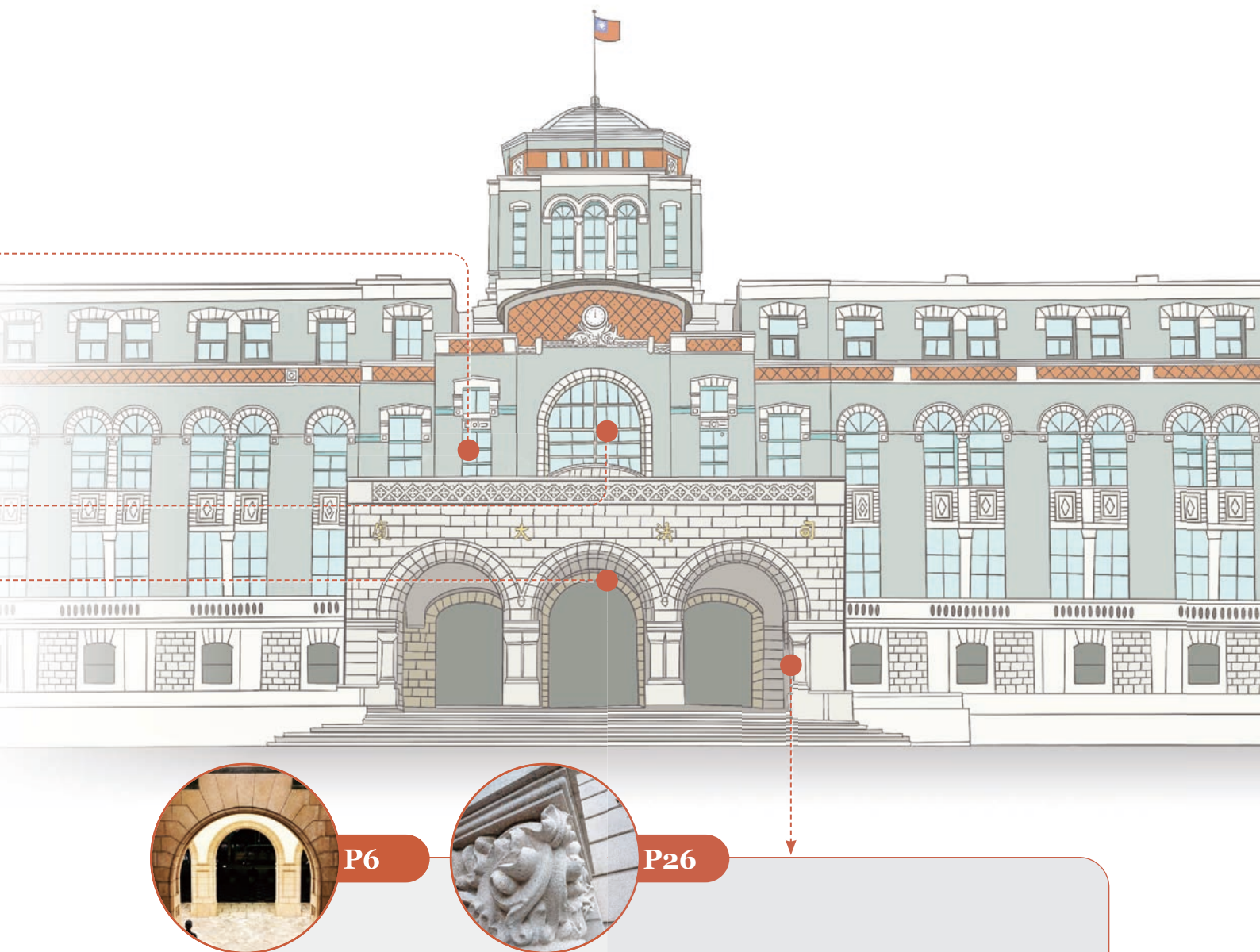


**P63**

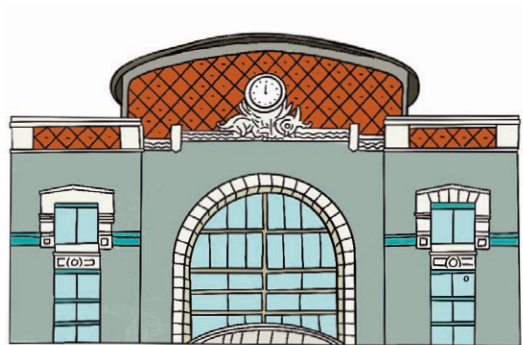
The second-floor lobby of the Judicial Office Building is clothed in natural marbles from Hualien. Its coffered ceiling is adorned with linear moldings, square rosette appliques, and corner cartouches containing acanthus leaf motifs.

Influenced by European Modernism, the Judicial Office building is an example of “Transition Architecture,” characterized by a simple, bright, and clear style, devoid of classically complex decoration. Though the building is decorated with arches and arched windows that are often seen in classical buildings, its decorative lines are simplified.

The architectural style of the Judicial Office Building is an imitation of the non-classical patterns of the Byzantine architectural style with Renaissance characteristics. The three circular arches and arched windows at the entrance hall reflect an Arabic and Islamic architectural style.



The Judicial Office Building's porch is designed with three arches, a style commonly seen in Islamic architectures. Double pillars on both sides of each arch are decorated with Romanik floral relief. The pilasters of the inner arched gate are ornamented with square plaques showcasing geometric leaf motifs.



## Taiwan Constitutional Court Annual Report 2024

With special thanks to external reviewer,  
Research Prof. Oran Doyle (Institutum Iurisprudentiae, Academia Sinica).  
Image Credits: Maurice Hong-Cheng CHANG (6, 7); Tai-Chun KUO (40, 41, 98, 99)

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