

The Taiwan Constitutional Court

Press Release On the Adultery Case

For Immediate Release
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The Taiwan Constitutional Court (TCC) rules the criminal punishment for adultery is unconstitutional. On May 29, 2020, the TCC renders the J.Y. Interpretation No. 791, holding unconstitutional two provisions regarding adultery. The first provision is Article 239 of the Criminal Code, which provides for the adultery crime. The second provision also held unconstitutional is the Proviso of Article 239 of the Code of Criminal Procedure, which allows the victim spouse to withdraw his or her complaint against the adulterous spouse only, while he or she continues to seek criminal sanction for the extramarital partner concerned. Both provisions shall become null and void immediately after the announcement of this Interpretation.

The TCC held an oral argument on this case on March 31, 2020. After about two month's deliberation, the TCC finally releases its decision on May 29, 2020. For the first time in history, the TCC announces its Interpretation at 4 PM of today at its courtroom, with all of the fifteen Justices present. Chief Justice Tzong-Li Hsu reads the rulings and their main reasons to a small audience of about 30 persons sitting in the courtroom. Both the oral argument and the announcement of decision are live streamed to the public in real time.

This Interpretation overrules a precedent, Interpretation No. 554, which was rendered on December 27, 2002. Interpretation No. 554 found constitutional the crime of adultery under the same Article 239 of the Criminal Code, which entered into force in 1935. It held the individual autonomy on sexual conducts could be limited for the purpose of protecting the marriage and family. In Interpretation No. 791, the TCC expands the scope of the autonomy on sexual conducts and renames it to be the right to sexual autonomy under Article 22 of Taiwan's Constitution. Both Interpretations No. 554 and No. 791 finds constitutional the legislative purposes of the adultery crime provision, which is intended to safeguard the marriage. However, today's new Interpretation No. 791 holds unconstitutional its means of imposing a criminal punishment of imprisonment for no more than one year on both the adulterous spouse and his or her extramarital partner, respectively, for violating the right to sexual autonomy. The TCC also stipulates that the investigation and trial of an adultery crime will inevitably invade the spatial and informational privacy of both offenders. The TCC maintains that the infringement of the right to sexual autonomy and the invasion of

personal privacy are so severe and intruding, in spite of its slight contribution to the protection of marriage. Therefore, the criminal punishment of adultery fails the test of proportionality and shall be ruled unconstitutional. The Interpretation No. 554 is overturned.

As the crime of adultery is declared unconstitutional by the TCC, the proviso governing the effect of the victim spouse's withdrawing his or her complaint against the adulterous spouse in Article 239 of the Code of Criminal Procedure shall accordingly become null and void as well. However, the TCC further finds this Proviso unconstitutional for violating the right to equality under Article 7 of Constitution, as the different treatment of the adulterous spouse and his or her extramarital partner bears no substantial relation to the realization of its purpose.

There are 22 petitions and 27 original cases consolidated by the TCC in Interpretation No. 791. Six out of 22 petitions and 27 original cases were filed by individual offenders of the adultery crime, after exhaustion of the ordinary judicial remedies. The remaining 16 petitions (21 original cases included) were filed by various judges presiding over adultery cases.

There are six concurring opinions filed by Chief Justice Tzong-Li Hsu, Justice Jeong-Duen Tsai, Justice Chih-Hsiung Hsu, Justice Jui-Ming Huang (joined by Justice Sheng-Lin Jan), Justice Jau-Yuan Hwang, and Justice Ming-Yan Shieh, respectively. Justice Horng-Shya Huang and Justice Ming-Cheng Tsai, each, files an opinion concurring in part. Justice Chen-Huan Wu files a dissenting opinion.