

Leading Cases of the Taiwan Constitutional Court

Leading Cases of
the Taiwan Constitutional Court

Volume Two

Judicial Yuan

Copyright © 2019 by the Judicial Yuan

All rights reserved

Printed in Taiwan

ISBN 978-986-5431-31-0

Table of Contents

| | |
|---|----------|
| Preface to Volume Two | ix |
| I. Introduction | 1 |
| II. Leading Cases | |
| <i>1. Freedom of Expression</i> | |
| No. 577 (Compelled Speech Case) | 9 |
| No. 756 (Prisoners' Freedom of Secrecy of Correspondence and Freedom of Expression Case) | 19 |
| No. 617 (Criminal Offence of Disseminating Obscene Material Case) | 31 |
| No. 509 (The Defamation Case) | 47 |
| <i>2. Equality</i> | |
| No. 760 (Disparate Impact Discrimination in Police Recruitment Case) | 53 |
| No. 618 (Exclusion of Mainland Chinese Migrants from Civil Service Case) | 67 |
| No. 649 (Preferential Treatment of Vision-Impaired Individuals Case) | 75 |
| No. 666 (Sexual Transaction Punishment Case) | 83 |
| <i>3. Right to Personal Liberty</i> | |
| No. 384 (The Constitutionality of the <i>Liurang</i> (Hoodlums) Act Case) | 87 |
| No. 636 (The Constitutionality of the <i>Liurang</i> (Hoodlums) Act Case) (The Third Case on the Same Act) | 97 |
| No. 392 (The Prosecutor's Power to Detain Suspects without Warrant Case) | 115 |
| No. 567 (The Disciplinary Measures for Prevention of Recidivism by Communist Espionage Criminals Case) | 141 |

| | |
|---|-----|
| No. 708 (The Immigration Detention of Foreign Nationals Pending Deportation Case) | 149 |
| No. 690 (Compulsory Quarantine and Personal Liberty and Security Case) | 159 |
| No. 588 (Deprivation of Personal Liberty and Security Case) | 169 |
| No. 535 (Spot Checks Case) | 183 |
| 4. <i>Due Process in Administrative Procedures</i> | |
| No. 763 (Obligation to Notify the Original Landowner of the Use of the Expropriated Land Case) | 191 |
| No. 709 (Review and Approval of Urban Renewal Project Summaries and Plans Case) | 201 |
| 5. <i>Right to Judicial Remedy</i> | |
| No. 755 (Judicial Remedies for Inmates Case) | 223 |
| No. 582 (Cross-examination of Co-defendants Case) | 235 |
| No. 762 (The Right of a Defendant to Access Information in the Court Dossier Case) | 251 |
| 6. <i>Unenumerated Constitutional Rights</i> | |
| No. 490 (Obligation to Perform Military Service Case) | 259 |
| No. 476 (Capital Punishment in Drug Control Laws Case) | 267 |
| No. 563 (Expulsion of Graduate Student Case) | 273 |
| No. 644 (The Prohibition against Associations Advocating Communism or Secession Case) | 281 |
| No. 689 (Freedom of the Press and Its Restraint Case) | 287 |
| No. 719 (Mandatory Requirement to Employ a Certain Percentage of Indigenous Persons Case) | 303 |

7. Social Rights

| | |
|--|-----|
| No. 472 (Compulsory National Health Insurance Case) | 313 |
|--|-----|

Appendix

| | |
|---|-----|
| Constitution | 319 |
| Additional Articles of the Constitution | 355 |
| Judicial Yuan Organization Act (Excerpt) | 367 |
| Constitutional Court Procedure Act (1993) | 371 |
| Justices of the Constitutional Court | 381 |
| Complete Lists of J.Y. Interpretations | 429 |
| Translators and English Editor of the Leading Cases | 431 |

Index

| | |
|---------------|-----|
| Subject Index | 437 |
| Case Index | 440 |

Preface to Volume Two

The year 2018 marked the seventieth anniversary of the Taiwan Constitutional Court (“TCC”). In September 1948, ten Grand Justices held their first meeting of the “Council of Grand Justices,” which was the former English title of the TCC. At that time, it was the first constitutional court in Asia. Seven decades later, it has developed into a dynamic and active court, exercising the power of constitutional review, among others. To celebrate this remarkable milestone, we selected twenty leading cases and brought together their English translations in Volume One. Following the publication of Volume One, we now select additional 28 leading cases on individual rights, rendered during the same time span of 70 years, and produce Volume Two. In 2020, we expect to publish Volume Three on the issues of separation of powers, to complete the publication project of leading cases of the TCC.

My colleagues, Justice Chang-fa LO (retired), Justice Jui-Ming HUANG, and Justice Jau-Yuan HWANG, worked together as an excellent team in setting up the project framework, selecting the cases, and inviting the translators’ participation. I am grateful for their contributions. Professor Charles WHARTON assisted in editing the English translation and provided numerous valuable comments on the merits. Without his input, the quality of this volume would certainly be lessened. Under the guidance of former Director Pi-Fang WANG and current Director Mr. Chen-Chou HSU, the entire administrative staff, especially Ms. Mei-Hui WANG and Ms. Li-Chun LAI, made every effort to publish this high-quality volume. I must offer my deep appreciation to all of them here.

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



Tzong-Li HSU

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

November 2019

