
J.Y. Interpretation No. 328 (November 26, 1993)*

The Boundaries of National Territory Case

Issue

Can the Constitutional Court interpret the delimitation of the boundaries of national territory?

Holding

Instead of enumerating its components, Article 4 of the Constitution provides that the national territory of the Republic of China is determined “according to its existing national boundaries.” Based on political and historical reasons, a special procedure is also required for any change of territory. The delimitation of national territory according to its history is a significant political question, and is thus beyond the reach of judicial review.

Reasoning

How to delimit the boundaries of national territory is purely a political question. The delimitation of the boundaries has been recognized as “an act of state” and is not subject to judicial review according to the constitutional principle of separation of powers. Article 4 of the Constitution provides: “The territory of the Republic of China according to its existing national boundaries shall not be altered except by resolution of the National Assembly.” Instead of enumerating the components of national territory, a general provision was adopted, and a special procedure for any change of national territory was

* Translation by Marietta Sze-Chie FA, based upon the previous translation by Jyh-Pin FA

concurrently provided. It is understandable that this legislative policy was based upon political and historical reasons. Since the meaning of "according to its existing national boundaries" is closely related to the delimitation of national territory, accordingly, it is a significant political question. Based on the above explanation, this petition for interpretation is denied.

Background Note by Marietta Sze-Chie FA

J.Y. Interpretation No. 328 is the first case that adopted "political-question" doctrine. It set a precedent that the definition of existing national territorial boundaries under Article 4 of the Constitution is a matter of political question, which is not subject to judicial review.

The "political-question" doctrine has been developed by the Constitutional Court. Based on this doctrine, issues involving a political question or its similar concept should be left for political consideration by the political branches (including the executive and legislative branches), and are thus not to undergo judicial review. The "political-question" doctrine was mentioned again in J.Y. Interpretation No. 419. J.Y. Interpretation No. 419 involved the issue of whether the Vice President may hold the office of Premier of the Executive Yuan concurrently. The Constitutional Court held that it was not a political question, but rather a question of law concerning the validity of holding more than one public office under the Constitution. Therefore, the issue of whether the Vice President could hold the office of Premier of the Executive Yuan concurrently was an issue that was subject to substantive judicial review.