

The Judicial Interpretation of the Civil Law, Motivated by Politics

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Abstract

It is well-known that the law needs to be interpreted. And there are various interpretation methods developed by scholars accordingly. However, the judge does not always abide by them in reality. Instead, he might apply the law in a way that does not correspond with the theory. One of the reasons for such a discrepancy lies in politics. The judge misinterprets the law on purpose for fear of the political power. The thus existing political interpretations happen quite often in Taiwan where the rule of law is not generally respected by politicians. This article will try to tackle two judicial precedents, which exemplify the influence of politics on the court in the civil law *par excellence*. Although they were *de jure* obviously wrong, the Supreme Court made them respectively in 1958 and 1973. Both cases were related to the rental agreement with a clause saying that it would not end until the achievement of the reunification of China. Theoretically, this clause should be classified as a "condition" since its realization was not certain. Nevertheless, all the participating courts regarded it as a "indefinite date" (*incertus quando*). That means, the achievement of the reunification of China would come true sooner or later. Such an interpretation was in accordance with the omnipotent ideology during the reign of the Martial Law. Unfortunately, political interpretations still exist nowadays in different fields of the law not only due to a new ideology but also because of personal ambitions of the jurists.

Keywords: interpretation methods of law, civil law, political interpretation, constitution, judicial independence, politics, ideology, paradigm shift, precedent, condition, indefinite date, reunification of China