

Annual Review of 2023 on the Civil Procedural Law: The Constitutionalization of Civil Procedural Law

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Abstract

The so-called constitutionalization of civil procedural law refers to the permeation of the protection of fundamental procedural rights into civil procedural law (and other civil procedural regulations); this encompasses two stages: first, the construction of a constitutional system for the protection of the right to litigation, which is guaranteed by Article 16 of the Constitution of the ROC and is equivalent to fundamental procedural rights, and, secondly, the implementation of the protective system in civil procedural law. The progress of the constitutionalization of civil procedural law in Taiwan began with the theoretical groundwork laid by scholars since 1980, attributed particularly to the Civil Procedural Law Research Foundation; this has been gradually yielding results in legislation and judicial rulings, as we can see quite a few court judgments or legislative explanations citing the protection of the right to litigation. Among the mentioned three types of actors for constitutionalization of law, the academics, the courts, and the lawmakers, judicial rulings play a key role in advancing the constitutionalization of civil procedural law: the protection system for the right to litigation awaits the Constitutional Court's consideration of the principles and characteristics of civil procedural law for confirmation, while the protection of the right to litigation relies on civil courts to interpret the civil procedural law in orientation or conformity of the constitution, or to further develop it; without the cooperation of the courts, legal theories would not have practical effect, and lawmakers would not consider the urgency for legislation. In light of this, this article focuses on the rulings of the Constitutional Court and the Supreme Court

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regarding the protection of the right to litigation in civil cases, and also takes other types of cases such as family, commercial, intellectual property, and compulsory enforcement into account; it observes and summarizes the stand of current development, with preliminary analysis and review of its appropriateness provided for further discussion.

Keywords: constitutionalization, right to litigation, due process of law, constitution-oriented interpretation, interpretation in conformity with constitution, development of the law