

Normative Effects of the Fundamental National Policies in Taiwanese Constitution and Their Influence on Social Justice

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Abstract

Issues of social justice are addressed in Chapter 13 of the Constitution and Article 10 of the Amendment to the Constitution regarding “fundamental national policies”. Rather than explaining the “content” of constitutional norms on fundamental national policies, the purpose of this article is to explore the normative “effect” of these constitutional norms. Through a comparative analysis of “fundamental rights” and “national goal regulations” in the German Basic Law and the distinction between “rights” and “principles” in the Charter of Fundamental Rights of the European Union, it is argued that constitutional norms on fundamental national policies should be considered norms with direct binding effect, rather than “program clauses”. As norms with direct binding effect, these constitutional norms on fundamental national policies can serve as a constitutional basis for the government to impose legal restrictions on people’s fundamental rights. They can also serve a supplementary function in the interpretation of the “area of protection” and the “functions” of fundamental rights based on the relatedness of things. The normative nature of these constitutional norms is objective law, but they can also be considered subjective rights, which shall be determined on a case-by-case basis in accordance to the nature of fundamental rights issues involved. It is concluded that the restrictive, supplementary and feedback relationship of the constitutional norms on fundamental national policies and fundamental rights can function to deal with issues of social justice.

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Important human rights conventions of the United Nation have positive meanings for the realization of social justice, but they cannot serve as the basis for constitutional review due to its lack of constitutional validity. Universal human rights standard and values can still supply the content and function of our constitution through the application of the method of comparative law, so as to keep the norms on fundamental rights and fundamental national policies updated and alive.

Keywords: social justice, fundamental national policies, fundamental rights, social fundamental rights, objective law, subjective right, human rights conventions