

Developments in the Law in 2016: Protecting the Procedural Rights to Civil Proceedings

*Kuan-Ling Shen**

Abstract

The right to a fair trial is guaranteed by the Constitution. Civil Procedure Code is also known as applied Constitution. Therefore, civil courts have responsibility to interpret the Civil Procedure Code by considering constitutional values and to adopt a constitution-based method. This article analyzed significant decisions of the Taiwan's Supreme Court in 2016 regarding the right to a fair trial, which included three parts: the right of access to court, the right to be heard and prevention of surprise verdict, as well as the efficiency of justice, in particular the addition of defendants in the second instance and the amendment of claims in the group action. As to the right of access to court, decisions of the Taiwan's Supreme Court were made on the condition of litigation aid, the standing to rehearing proceeding for a divorce verdict and the agreement of jurisdiction. The Supreme Court permitted a rehearing proceeding, in which the divorced wife filed a suit against the legitimate successor of the deceased ex-husband to rehear her divorce case. Regarding the right to be heard, decisions were made on the duty of the courts to elucidate the subject-matter of the dispute, facts or laws, the right to be heard in public open trial and disclosure to parties, the right to state the opinion in provisional remedies proceedings, the effect of a payment order and issues preclusion. Regarding to the effective resolution of disputes in one procedure, the Supreme Court allowed the motion to add defendants in appeal proceeding under the condition of protecting the new defendant's litigation right, however, dismissed the plaintiff's motion to add

* Professor of Law, College of Law, National Taiwan University.
E-mail: kshen@ntu.edu.tw

claims for more victims in the appeal proceeding of RCA case, which is the first environmental litigation by way of group action.

Keyword: right of access to court, litigation aid, rehearing proceeding, right to be heard, to be heard in public open trial, disclosure to parties, payment order, issue preclusion, addition of defendants, group action