

Taking Constitutional Court Decisions Seriously: The Implementation of J.Y. Interpretations

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Abstract

In Taiwan, most constitutional scholars pay scant attention to the compliance of Judicial Yuan Interpretations. Nonetheless, the compliance of constitutional court decisions is no less important than the ruling itself. If a court decision will not be implemented, the protection of fundamental rights and separation of powers are like chasing the will-o'-the-wisp. This is a devastating blow to the authority and independence of the constitutional court. In the long run, it may undermine the rule of law and constitutionalism. To fill this academia lacuna, this paper investigates the compliance of every constitutional court decision that the Court made after democratization. Although most Judicial Yuan Interpretations have been faithfully implemented by the authorities concerned, this paper argues that: 1) the binding force, that is, when a mandate is written in the ruling rather than the reasoning, is neither sufficient nor necessary to force the political branches to implement judicial decisions; 2) political branches are less likely to implement decisions with suspension order with no deadline or with advisory deadline; 3) sometimes the noncompliance of judicial decisions should be attributed to the Constitutional Court itself, at least in part, instead of the political branches. These findings entail two normative implications. First, judicial lawmaking, albeit ostensibly undemocratic, is necessary in some scenarios when the political branches deliberately choose to ignore judicial decisions. That is, judges are, in a sense, forced to legislate. Second, the findings may provide another perspective for public interest lawyers and social groups to rethink whether the Constitutional Court can bring about different levels of social change. On the one hand, it seems

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clear that judicial decisions do have a direct effect on legal change because most of them have been enforced. On the other hand, whether judicial decisions have indirect effect seems to be less certain.

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