

Retroactive Effects of Constitutional Interpretation in Criminal Cases

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Abstract

The challenging issues of temporal effects of constitutional interpretation in Taiwan have been neglected ever since it was appeared in the caseload of the Grand Justices in the early 1980s. Very regrettably, this situation will continue to exist in the newly enacted Constitutional Court Procedure Act. There are at least three problems with the system of the temporal effects brought out by this Act. Firstly, the Article 53 II, which makes a 180-degree turn and entitles any defendant with the right to reopen a final criminal judgment according to a new constitutional interpretation, ignoring the reality that there is no consensus regarding the issues of retroactivity of laws. In particular, it fails to understand that any approach of the temporal effects has its own merits and demerits. Furthermore, this regulation also fails to understand that there is a third choice of the system of temporal effects of constitutional interpretation, i.e.: the US system of retroactivity of laws. Secondly, through Article 53 I, which maintains the principle of non-retroactivity, with Article 52 I and Article 53 II, the newly enacted Constitutional Procedure Act establishes a unique but bizarre system in terms of comparative law. This system not only produces the outcome of inequity among pending cases but also makes the situation of some pending cases, those in the investigation phase, worse than the final judgements. What's worse, this situation will continue to exist after the enactment of the new law. Thirdly, most importantly, besides expanding the scope of retroactivity, to consolidate the fruits of expanding retroactive application of new rules, we are required to modify the current post-conviction procedure in Taiwan. This is simply because the new Article 53 II of the Constitutional Court

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Procedure Act would not only increase the caseload for seeking the post-conviction reliefs but add huge burdens to the system of the post-conviction review. Therefore, we will need a new system of post-conviction procedure in Taiwan.

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