

The Difficulties and Their Solutions of the System of Constitutionality of Constitutional Complaints in Taiwan

Tsung-I Chen*

Abstract

This article discusses “how to review a final court decision based on the constitution” as “the difficulties of the system of constitutionality of constitutional complaints in Taiwan”, and tries to solve how to use the constitution to decide whether the case of constitutional complaints is admissible or violates the constitution. To this end, this article proposes to solve the difficulty of functional law and the difficulty of substantive law. The difficulty of functional law means, “when” the Constitutional Court has the authority to review the constitutionality of a final court decision, and the difficulty of substantive law means, “how” the Constitutional Court reviews the constitutionality of a final court decision. In order to deal with the above-mentioned difficulties, this article firstly explains basis, controversy, experience and the derived difficulties of the system of constitutionality of constitutional complaints in Taiwan; secondly, this article expounds experience, difficulties and solutions of the system of constitutionality of constitutional complaints in Germany; finally, this article attempts to solve “how to review a final court decision based on the constitution”. The solution to the difficulty of functional law depends on the simultaneous identification of the admissible requirements of Article 61 Paragraph 1 under Constitutional Court Procedure Act. That is to say, the Constitutional Court should judge whether the case of constitutional complaints involves the necessary protection of human dignity and free development of personality, and thus judges whether the case

* Associate Professor, Department of Law, National Cheng Kung University.
Email: tichen@ncku.edu.tw

concerns “principles of constitutional significance”. This allows the Constitutional Court to review a final court decision based on the constitution. In order to solve the difficulty of substantive law, the Constitutional Court should review a final court decision through three levels of interpreting the constitution, interpreting judgments, and reviewing judgments. The Constitutional Court should examine whether a final court decision has correctly applied the constitution, namely whether “interpretation according to the constitution” has been properly used, and then judges whether a final court decision violates the constitution.

Keywords: Constitutional Court Procedure Act, Constitutional Court, Constitutional Jurisdiction, Constitutionality of Constitutional Complaints, Constitutionality of Laws, Method of Interpretation of the Constitution, Interpretation According to the Constitution