

**The Purposes and Functions of Concrete Judicial Review and
its Admissibility: An Analysis on Judicial Yuan Interpretation
No. 786**

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Abstract

The majority opinion and the minority opinion in Judicial Yuan Interpretation No. 786 debate on whether judicial review petitions from lower court judges should be admitted, and whether it is appropriate to give in-depth instructions on the applied law. The cause of this debate roots indeed in their different understanding of the purposes and functions of concrete judicial review, and how the requirement of admissibility be correctly interpreted. In this regard, this article analyzes the aforementioned differences in order to advise the Taiwanese Constitutional Court in deciding those issues.

This article argues that the main purpose of concrete judicial review is to maintain legal consistency and legal stability; by contrast, individual rights are protected only indirectly. The object of concrete judicial review should be the current effective law. Thus, the law before the legislative change is in principle no longer a legitimate object for review. But when the lower court decision was based on the law before the legislative change, the petition for judicial review would be still beneficial for the petitioner, thus constituting an exception. In this case, the boundary for the constitutional court's legislative instruction would be another question to consider. In addition, before presenting a petition for concrete judicial review, the lower court should be sure that the law in question has no room to be construed constitutionally. So, when it comes to penalty or sanction laws, the laws that govern actions and sanctions should be examined simultaneously, for the

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meaning of the laws would not be fully explained otherwise. Besides, since Article 5 of the Administrative Penalty Law changed the phrase “when sanction therefore was initially imposed by the administrative agency shall apply” to “when sanction was imposed shall apply”, administrative petition and administrative litigation process should follow the new legislation as administrative agencies do. Accordingly, if the law is changed in favor of the punished person after their action, the court should apply the law most favorable to the punished person.

Keywords: Judicial Yuan Interpretation No. 786, concrete judicial review, legal certainty, conditions of admissibility, the change of law.