

The Constitutional Complain and Due Process for the Minor Children in the Family Proceedings

Kuan-Ling Shen^{*}

Abstract

This article examines the object of constitutional complaint, the subject matter of the proceedings, the standing of the claimant, and the procedural justice for minor children, in the case of the Judgment of Constitutional Court (111) No. 8. The subject matter of the proceedings should be interpreted in accordance with the claimant's intent. Moreover, under *iura novia curia*, the subject matter of the claim should not be interpreted strictly in terms of the admissibility requirements. After the constitutional complaint is to be accepted, the scope of examination should be determined by the purpose of the constitutional complaint system, which includes relevant and significant constitutional rights violated at issue. In terms of the standing of claimants, although there are conflicting interests between parents and children in a parental rights case, it is advisable to refer to the European Court of Human Rights model. It recognizes the parent as the claimant and the minor child as the actual party, so that the constitutional court can intervene in a timely manner to protect the constitutional rights of the minor child if they are infringed by the decision in question.

With respect to the due process protection of minor children, under the old law, the inquisitorial doctrine of family proceedings was criticized for neglecting the procedural status of the relator. As a result, provisions were added to enhance the protection of the relator's right to be heard, and the court is explicitly required to hear the child in person. If a child has the capability to express his or her opinion, but the court has not heard the child in person at any instance of trial nor has it

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

selected a procedural representative, this would fail to fulfill the legislative intent of the Family Law Act and the Convention on the Rights of the Child and the constitutional requirements of due process.

Keywords: Constitutional Complain, the subject matter, due process, minor children, family proceedings, best interest of the child, the right of the child to be heard, Guardian ad litem

