CCE-068 | How Does Judicial Review Protect Citizens' Rights?

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Abstract:

Judicial review is a system in which a court or constitutional court determines, in a specific case or abstract dispute, whether laws, orders, or even final court judgments are unconstitutional, and renders or annuls unconstitutional provisions. Starting with the Constitutional Court of the Republic of China (Taiwan)'s 2024 death penalty judgment, this article addresses three questions: What does judicial review actually protect, how far does that protection reach, and where are its limits? Official statistics show that in the three

years after the new system took effect in 2022, 99.10% of petitions received by the Constitutional Court came from individuals, but only about 4.2% proceeded to adjudication on the merits; among final judgments reviewed, 87.1% were declared unconstitutional and remanded. This shows that review has indeed opened a channel for citizens, while also showing that it is an extremely narrow gate. The death penalty case also shows that judicial review can raise procedural thresholds without abolishing an institution; executions have still taken place after the judgment. By contrast, courts in the People's Republic of China (Mainland China), governed by the Chinese Communist Party, do not have the power to interpret the Constitution or declare laws unconstitutional, and the 2001 Supreme People's Court reply in the Qi Yuling case was revoked in 2008. The value of review does not lie in courts "always taking the citizens' side," but in citizens having a path they can initiate, through which public reasoning can be given, and by which provisions can be invalidated.

1. Starting with Petitions by 37 People Sentenced to Death

On September 20, 2024, the Constitutional Court of ROC (Taiwan) issued Judgment No. 8 of 2024 (113-Hsien-Pan-8), known as the "Death Penalty Case." The petitioners were all 37 people then finally sentenced to death. They argued that imposing the death penalty for crimes including murder, robbery-murder, rape-murder, and kidnapping for ransom resulting in murder, as well as the criminal procedures they had undergone, violated the Constitution [2].

The outcome of the judgment is difficult to summarize as "for" or "against" the death penalty. The majority held that imposing the death penalty for these categories of intentional homicide does not violate the constitutionally protected right to life, provided the crimes are among the "most serious cases" and the "strictest due process" requirements are met. However, the absolute death penalty provision in the 1999 version—"a person who intentionally kills the victim while kidnapping for ransom shall be sentenced to death"—was declared unconstitutional because it imposed the death penalty in every case without distinguishing circumstances, in violation of the principle of culpability [2]. The Court also required that defendants have counsel during investigations; that counsel be present and oral argument be held at the final instance; that a death

sentence be decided unanimously by a panel of professional judges; that a person whose mental condition significantly impairs the ability to understand or defend themselves not be sentenced to death; and that a person who has lost the capacity to undergo punishment not be executed [2]. For some matters, including provisions concerning mental conditions, the relevant authorities were given two years to review and amend the law. Until amendments are completed, courts must follow the judgment's reasoning, and petitioners whose cases have become final may ask the Prosecutor-General to file an extraordinary appeal [2].

Two details in this judgment are worth noting. First, the Court explicitly stated that the case did not address whether the death penalty is constitutional in general, nor did it address other offenses such as treason or drug offenses [2]. Second, the English summary of the judgment includes a translator's note: the case background was written in September 2024, and one petitioner was executed on January 16, 2025 [2]. Judicial review raised the procedural threshold, but it did not make the death penalty a thing of the past.

2. Clarifying the Concept

"Judicial review" is often simplified as "the court can overturn laws," but it actually includes several distinct layers. The first is abstract review of legal norms: judges, individuals, or institutions identify a law as unconstitutional. The second is review of judgments: a constitutional court is asked to review a final court judgment on the grounds that it infringes constitutional rights. The third includes other powers, such as inter-institutional disputes and the unconstitutional dissolution of political parties. Since January 4, 2022, ROC (Taiwan) has operated under a new constitutional litigation system. After exhausting remedies through the court levels, individuals may petition the Constitutional Court within six months from the day after a final judgment is served, asking it to declare the judgment unconstitutional, or to declare both the judgment and the legal norms it applied unconstitutional [4].

The difference from what many people imagine is that the system protects "rights applied to oneself," rather than any person's abstract dissatisfaction with any law. A petition must explain how the petitioner's own constitutional rights have been unlawfully

infringed [4]. Earlier, Interpretation No. 748, issued on May 24, 2017, held that the Civil Code's marriage chapter, by not allowing two people of the same sex to form a permanent union, violated the Constitution. It gave the legislature two years to act, and the Legislative Yuan enacted an implementing act in 2019 [8]. This was an early example of the common practice of "requiring legislation within a time limit," and the Death Penalty Case used the same structure.

3. The Numbers: How Wide—and How Narrow—is This Gate?

A special statistical analysis published by the Constitutional Court on the third anniversary of the new system provides a fairly specific picture [1].

First, how wide is the gate? From 2022 through the end of 2024, a total of 7,254 petitions were filed, including 387 older cases still pending at the end of 2021 and 6,867 new filings. The average number of new cases was 190.8 per month, 3.8 times the average of 50.0 per month under the old system over the preceding five years (2017–2021). Of the new cases, 6,805 were petitions by individuals, or 99.10% [1]. According to the report, the new system does not require mandatory legal representation and does not charge court fees; this provides context for understanding the number of petitions [1].

Next, how narrow is the gate? Over the three years, the Court terminated 6,341 cases by ruling them inadmissible. Of these, 6,145 were unanimously ruled inadmissible by review panels made up of three grand justices, accounting for 96.91% [1]. A total of 278 cases were accepted and received a decision on the merits: 51 judgments, 226 consolidated cases, and one substantive ruling. The Court calculated the rate of decisions on the merits as 4.20%; the rate was 1.16% in 2022, 5.06% in 2023, and 10.89% in 2024 [1].

Then, what happened after cases entered review? Among the 51 judgments, there were 142 instances of review of legal norms. Of these, 72 (50.70%) were declared unconstitutional, while 70 (49.30%) were not [1]. In reviews involving final judgments, 31 judgments were examined: four (12.9%) were found constitutional, while 27 (87.1%) were declared unconstitutional, vacated, and

remanded [1]. In addition, oral arguments were held in 24 of the 51 judgments (47.06%), far above the 3.59% rate during the old constitutional interpretation system (1993–2021) [1].

These figures should be used carefully. “Half of the legal norms were declared unconstitutional” does not mean that half of the laws of ROC (Taiwan) have constitutional problems, because the cases reaching judgment are a tiny fraction selected from more than 6,800 petitions. A more reasonable reading is that, for citizens, opportunities are numerous but success is rare; once a case is accepted, however, the success rate is not low.

4. A Rights Case: The Offense of Public Insult

In the area of freedom of speech, Judgment No. 3 of 2024 (113-Hsien-Pan-3), issued on April 26, 2024, the “Public Insult Case,” provides a clear example. There were 24 petitioners: half were people convicted of the offense, and the other half were judges or judicial panels who questioned whether the offense was constitutional [3].

The Court’s conclusion was neither to abolish the offense nor to leave it unchecked. Paragraph 1 of Article 309 of the Criminal Code is constitutional within a particular scope of interpretation: public insult must involve publicly and intentionally denigrating another person’s reputation, and must exceed what an ordinary person could reasonably tolerate. Courts must also balance the freedom of expression of the offensive speech against the victim’s reputation, considering the speech’s impact on reputation, its contribution to public discussion, its value in academic and professional fields, and its literary or artistic character [3]. The Court emphasized that negative comments about public affairs may still contribute to public discussion, even when unpleasant; speech that merely offends should not be regarded as exceeding what an ordinary person could reasonably tolerate; and short-term imprisonment should be considered only for serious insults, such as insults that persist, accumulate, and spread online [3].

The latter part of the judgment is even more important: in the four individual cases in which review of final judgments was petitioned, the Court found all four final judgments unconstitutional, vacated

them, and remanded them [3]. In other words, in the same judgment, the law was upheld, but cases in which it had been applied too broadly were corrected. This is judicial review's most concrete contribution to citizens' rights: it evaluates not only statutory provisions but also how judges apply them.

5. A Comparison: What Can Courts in PRC (Mainland China) Do?

The situation in PRC (Mainland China) is different. Article 131 of the current Constitution provides that people's courts independently exercise judicial power in accordance with the law and are not subject to interference by administrative organs, social organizations, or individuals. At the same time, Article 133 provides that the Supreme People's Court is responsible to the National People's Congress and its Standing Committee, while local people's courts at various levels are responsible to the state organs of power that established them [6]. The power to oversee implementation of the Constitution, interpret the Constitution, and annul provisions that contravene it belongs to the National People's Congress and its Standing Committee, not to the courts [6].

According to Keith Hand's research, the Constitution of PRC (Mainland China) does not expressly empower courts to interpret the Constitution or declare laws unconstitutional. In 2001, the Supreme People's Court issued a reply in the Qi Yuling case allowing the constitutional right to education to be applied in a civil case, prompting discussion of the "judicialization of the Constitution." But the Supreme People's Court formally revoked that reply in 2008. Since then, courts should not use constitutional provisions as a legal basis for judgments [5]. Hand also notes that some courts continue to cite constitutional provisions decoratively in their reasoning, and that some courts indirectly implement constitutional norms by applying ordinary laws. Overall, however, the prospect of courts becoming constitutional supervisory bodies is small [5].

Citizens are not entirely without recourse. After the 2003 Sun Zhigang case, three law PhDs petitioned the Standing Committee of the National People's Congress to review the Measures for the Custody and Repatriation of Urban Vagrants and Beggars. The State

Council repealed the measures on June 20 of that year [10]. But this route is a “review recommendation” to the legislature, not litigation in court: there are no procedural rights as a party to a lawsuit, no oral arguments, and no judgment with public reasoning. The outcome depends on whether the body under review is willing to respond.

6. Counterarguments: The Debate over Judicial Review

One substantial criticism concerns democratic legitimacy. The Constitutional Court is composed of grand justices, who are nominated and confirmed. When a small number of people overturn a law passed by an elected majority, this is called the “countermajoritarian difficulty.” The Constitutional Court controversy in ROC (Taiwan) in 2024–2025 is an example: the Legislative Yuan majority raised the number of justices required for the Constitutional Court to issue a judgment. On December 19, 2025, a majority of five grand justices declared the amendment invalid, while three other grand justices refused to participate; the legitimacy of the decision remains disputed [9]. Critics may say that when the Court rules on the rules governing whether it can hear a case, it is testifying to its own power.

A second criticism is statistical. Law and Versteeg compared the rights promised in the constitutions of different countries with actual human-rights performance, and found no statistical correlation between the existence of judicial review and greater respect for rights [7]. If this finding holds, the inference that “constitutional review means rights are protected” does not stand.

A third criticism comes from the official institutional account in PRC (Mainland China). Its core argument is that the Constitution assigns supervisory power to the organs of state power, courts are responsible to the People’s Congress, and errors are mainly corrected through record-filing review and legislative amendment [6][10]. This account is logically coherent. Its weakness is that the same system is both the subject of supervision and the source of the supervisory body; whether supervision reaches the core of power depends on the system’s own willingness [5].

Three responses can be made to these criticisms. First, the example

of ROC (Taiwan) shows that the “countermajoritarian difficulty” is not imaginary. But under the new system, individuals account for 99.10% of petitions, and 87.1% of reviewed final judgments were vacated, showing that review does not operate only among elites [1]. Second, the findings of Law and Versteeg are better understood to mean that “an institutional label does not equal an outcome,” rather than that “review is useless.” Their data mainly concern the level at which rights are realized and do not address individual remedies [7]. Third, record-filing review in PRC (Mainland China)’s system has indeed corrected many lower-level norms [10]. But it should be treated cautiously as a “safeguard” equivalent to court review, because citizens do not have standing as litigants in that process.

7. Limitations

First, the sections of this article concerning ROC (Taiwan) rely mainly on statistics published by the Constitutional Court itself and English summaries of judgments. A summary is not the judgment itself; if it differs from the Chinese judgment, the Chinese version governs [2][3].

Second, the two-year period for legislative revision set by the death penalty judgment expired in September 2026. As of the time this article was written, the author had not verified whether the Legislative Yuan had completed the relevant amendments, or verified subsequent executions and extraordinary appeals. The article therefore draws no conclusion about the judgment’s actual effects.

Third, the statistics cover only 2022–2024 and do not include the Constitutional Court’s suspension in 2025 or subsequent developments. The “rate of declarations of unconstitutionality” during the three years was also strongly affected by case selection and cannot be interpreted as the general rate at which laws are unconstitutional.

Fourth, the discussion of PRC (Mainland China) relies mainly on Hand’s 2022 study and reports reposted by official websites, and does not verify recent developments after 2022. Nor can one infer from this that Mainland Chinese citizens have no remedies through ordinary legal channels such as administrative litigation.

Fifth, this article does not compare systems outside the two jurisdictions, nor does it judge which system is “better.” It discusses only the function and limits of judicial review in protecting rights.

8. Conclusion

Judicial review protects citizens’ rights not because of judges’ positions, but through a set of procedures: who is eligible to petition, whether the court must respond, whether judgments provide public reasoning, and whether unconstitutional provisions or judgments are actually invalidated. Statistics under the new system in ROC (Taiwan) show that this procedure has been used extensively, while also showing how narrow it is. The death penalty and public insult cases show that it can strengthen procedural safeguards and correct individual cases without abolishing an institution. Courts in PRC (Mainland China) currently do not have this power. When citizens encounter unconstitutional provisions, their main option is to submit a review recommendation to the legislature, and the result depends on whether it responds.

For civic education, what is worth remembering is not “the courts will protect us,” but this: whether a right is protected depends on whether, when it is violated, citizens have a document they can submit and that must be answered.

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