

Judicial Review and Declaration of Unconstitutionality : An Analysis of the German Federal Constitutional Court's Decisions

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Abstract

The constitution is the supreme law and binds all state organs and the law-making authorities. The supremacy of the constitution can be ensured through judicial review. But how should judges respond after laws or regulations are judged unconstitutional? This question is related to the separation of powers between the legislature and judiciary. Through carefully reviewing the decisions of the German Federal Council of Grand Justices of the R.O.C., this paper attempts to offer some theoretical alternatives.

This paper is divided into six sections. First, it poses the research questions. Second, it discusses the major characteristics of the German judicial review. Third, it describes the major types of decisions of the German Federal Constitutional Court by declaring the norms' constitutionality. Fourth, when the German Federal Constitutional Court declares the unconstitutional norms null, and void ab initio, this paper explores its legal consequences. Fifth, the paper analyzes those decisions when the German Federal Constitutional Court determines only the norms' unconstitutionality without declaring them void. And finally, this paper offers some alternative explanations to the Council of Grand Justices for further discussion.

Key Words: supremacy of the constitution, judicial review, political freedom of legislator, deadlines, declaration of nullity, determination of unconstitutionality.