

Taiwan: Constitutional Court Hears Arguments On Divorce in Mid-November on No-Fault Divorces

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THE CONSTITUTIONAL COURT heard arguments on divorce in mid-November, with regard to current conditions that allow divorces to take place. [The hearing was held on November 15th, ending around 12 PM](#), though the issue has not received significant public exposure. This may be due to being overshadowed by the previous election cycle.

Current laws specify that if one of the two spouses is “responsible for the event”, it is “only the other party” that is able to apply for divorce. Consequently, in the event of a divorce, in the event of an affair, the “victimized” party has to agree to allow for a divorce.

This has led to criticisms that this traps people in marriages and denies them their constitutional right to enter into and dissolve marriages, as well as their right to autonomy. It is probable that such laws were previously seen as protecting victims of affairs, according to outmoded social values, but this was criticized as trapping people in loveless marriages—even when individuals may have different children and lived separately from their spouses for decades.

This, too, has been criticized as a punitive measure to entrap people in marriages for affairs. Indeed, one notes that it was only recently that Taiwan decriminalized adultery, even though adultery remains a civil charge. Adultery laws were criticized as disproportionately targeting women, but were originally seen by advocates as a way to protect women from adultery.

[Adultery was only decriminalized in Taiwan in May 2020.](#) Because of the fact that adultery charges required a high burden of proof, necessitating photographic evidence of sex in some cases, an entire industry of private investigators who often engage in illegal behavior sprung up to fill the market need for evidence for adultery charges. Actions by private investigators involved illegal attempts to capture footage of individuals having sex, wiretapping, or stalking of individuals suspected of having an affair. Despite this, polls from 2013 showed high public approval of adultery.

Likewise, provisions that specify that the party who is not “responsible for the event” that would lead to the dissolution of a marriage also entrap individuals in situations in which they are unable to obtain a divorce because of the disappearance or illness of their partner.

Judge Zhu Zheng-kun of the Kaohsiung District Court, who filed for an interpretation, has criticized this as a punitive measure against the responsible parties for a divorce. Zhu also emphasized that there is no way to restore the prior state of a relationship after an event that could lead to divorce. In the past, Zhu has emphasized the effects of divorce on children who have no say in what takes place between their parents.

[Chung Yuan University professor Li Li-ju takes the view that this is unconstitutional, while National Cheng Chi University professor Tai Yu-ru argued that the right to marriage includes the right to](#)

[divorce.](#)

Taiwan does not have provisions for no-fault divorces for heterosexual marriages, though this is allowed for same-sex marriages. As such, one of the arguments in favor of changing present laws is in order to accommodate principles of equality. Because current laws have also been criticized as disadvantageous to women, they have been criticized as violating the Convention on the Elimination of All Forms of Discrimination Against Women.

On the other hand, advocates of maintaining the current laws claim that this is to maintain the institution of marriage and its sanctity. Such discourse has proven an obstacle to advocacy for less restrictive regulation of sexual freedoms in the past.

The Ministry of Justice, which is in favor of the current laws, argues that both parties are usually found responsible in cases where it is no longer possible to maintain a marriage. Furthermore, the Ministry of Justice takes the view that legal changes should originate from the Legislative Yuan, perhaps hoping to avoid being caught in the crossfire regarding any legal changes about divorce laws that might result.

It is to be seen as to future decisions made on the matter. It is possible that, as with other controversial decisions, the Constitutional Court would specify a timeline for the legislature to make the relevant legal changes, otherwise divorces with the consent of merely one party would be allowed automatically.

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P.S.

• New Bloom. 12/11/2022:
<https://newbloommag.net/2022/12/27/military-conscription-one-year/>

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