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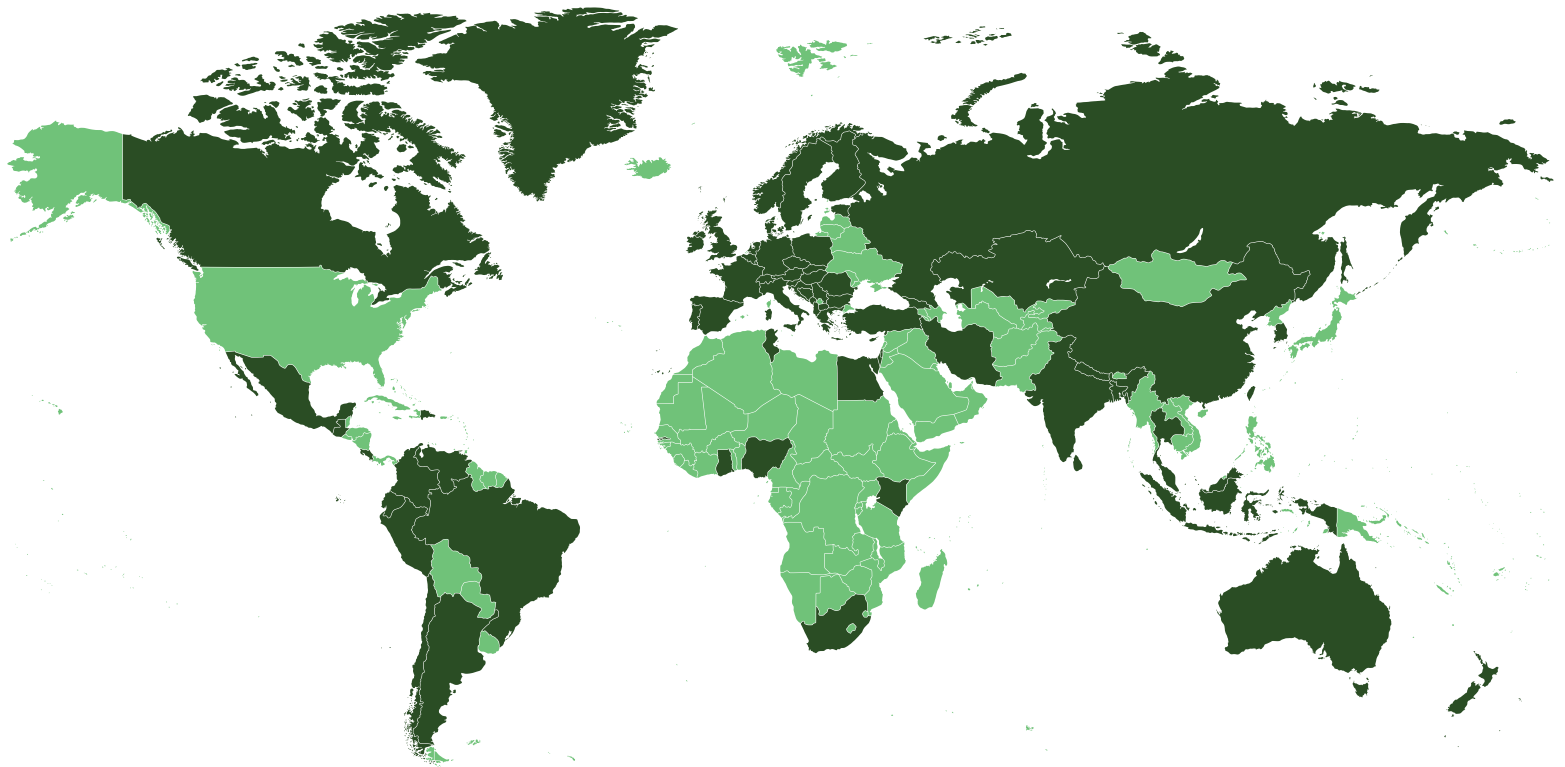
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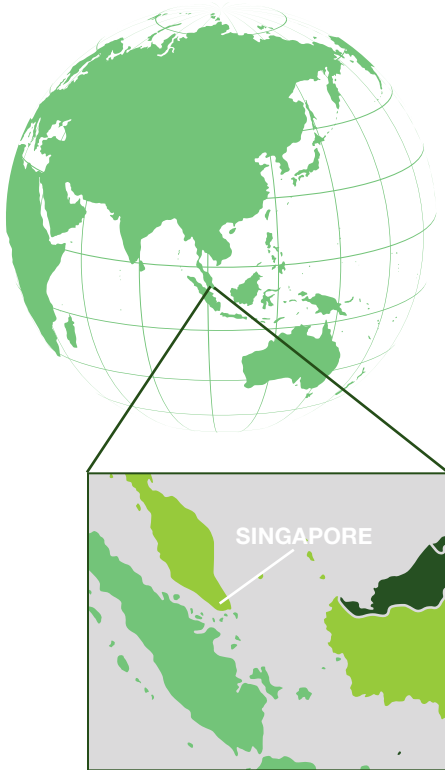
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COUNTRY REPORTS





Singapore

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I. INTRODUCTION

The year 2019 saw a flurry of important constitutional cases, alongside two significant legislative developments with constitutional implications. The Court of Appeal handed down its judgment on whether there is a constitutional requirement to call for a by-election in the case of a single vacancy in a Group Representation Constituency. This is a case that implicated foundational issues of legal hierarchy in Singapore. The judicial power and constitutional requirements of the principle of separation of powers remained another crucial area of constitutional discourse. It was, however, freedom of speech and assembly that took center stage in 2019 within and outside the courts. Aside from two constitutional cases touching upon the scope of Article 14 of the Singapore Constitution guaranteeing freedom of speech, association, and assembly, constitutional debate around the Protection from Online Falsehoods and Manipulation Act 2019 (POFMA), Singapore's anti-fake news law, also revolved around free speech concerns. Interestingly, however, amendments to the Maintenance of Religious Harmony Act (MRHA), legislation that had previously been criticized for its impact on religious freedom and freedom of speech, have largely been accepted by religious groups, which were most affected by these changes. One

possible reason for this is that there was widespread consultation among these groups before the amendments were introduced. Accordingly, as we observed generally last year, the Singapore government's increasing reliance on public consultations could serve "not only as a 'crowdsourcing' of ideas but also to play a legitimating role in the final legislative product."

II. MAJOR CONSTITUTIONAL DEVELOPMENTS

A. Protection from Online Falsehoods and Manipulation Act 2019

In 2019, Singapore became one of several countries in the world that passed a law aimed at countering fake news. POFMA empowers the Government to deal swiftly with online falsehoods by providing a range of remedies targeting the communication of "false statements of fact" (FSOF), and the making or altering of bots or the provision of services for that purpose.¹ An FSOF is defined as a false or misleading statement that a reasonable person would consider to be a representation of fact.²

Under POFMA, any Minister may issue a range of directions, including Correction Directions and Stop Communication Directions, if satisfied that an act communicating

¹ No. 18 of 2019. See ss 7-9.

² Ibid s 2(2).

a false statement of fact has been committed and that it is in the public interest to do so.³ A Correction Direction requires the party who communicated the falsehood to put up a notice admitting as such, and/or a correction to the falsehood and where the correction may be found. A Stop Communication Direction requires the party to take necessary steps to ensure that the falsehood communicated is no longer available on, or through, the Internet to end-users in Singapore. These may include the removal of the falsehood from an online location by a specified time and stopping the publication, sharing, or posting of the falsehood in Singapore. In addition, POFMA enables Ministers to require Internet intermediaries (such as Google and Facebook) and providers of mass media services to communicate correction notices to all its end-users, or to disable end-user access to the relevant statement.⁴

POFMA provides remedies for parties issued a Direction. There is an initial expedited appeal to the relevant Minister, and subsequently, the possibility of an expedited appeal to the court if the Minister rejects the appeal. The Minister must decide on an appeal no later than two working days after the appeal is received, and the court must fix a hearing within six days if the appellant requests an expedited hearing.

The enactment of POFMA garnered significant domestic and international attention,

including from the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.⁵ Opposition Members of Parliament argued that there was a risk that POFMA would be used against political dissidents and opposition members.⁶ Academics were also concerned that it might affect their academic freedom.⁷ Despite assurances from the Government, a group of academics issued a press statement urging it to include an exemption for academic work in the law.⁸ The Government took this criticism into consideration, assuring that the law only targets false statements of fact and not opinions and fair criticism.⁹ It also clarified that POFMA is carefully calibrated in that it leaves the original content untouched except in the case of a Stop Communication Direction. In addition, POFMA provides more extensive and expeditious judicial oversight through an internal appeal process. In comparison, the courts' usual oversight over other executive action is through judicial review only.

Notably, Singapore is by no means the only country that has anti-fake news laws; France, Germany, and Russia have also passed tough new laws against fake news or hate speech.¹⁰ As countries around the world grapple with the proliferation of fake news, a difficult balance will have to be struck between freedom of speech and the need to protect the integrity of a democratic system and the public interests of the people in the democratic state.

B. Maintenance of Religious Harmony (Amendment) Act 2019

Another major legislative amendment with constitutional implications concerned the MRHA. The MRHA serves to restrain religious speech that has the impact of threatening religious harmony, defined as causing feelings of enmity, hatred, ill-will, or hostility between different religious groups; carrying out activities to promote a political cause, or a cause of any political party while, or under the guise of, propagating or practising any religious belief; carrying out subversive activities under the guise of propagating or practising any religious belief; and/or exciting disaffection against the President or the Government while, or under the guise of, propagating or practising any religious belief. The MRHA had previously been criticized for its expansive reach.¹¹ However, no restraining order has ever been issued under the MRHA since it came into operation in 1990. The MRHA's primary effect was in setting out the terms for discourse in Singapore.

The MRHA was amended for the first time in 2019. The main purposes of the amendment were to address the use of the Internet and social media to spread hate and mobilise mobs against religious groups, and to regulate perceived foreign interference in domestic affairs globally. The significant amendments are, first, a restraining order

³ Ibid ss 4, 10(1) and 20(1).

⁴ Ibid Part IV.

⁵ See David Kaye, "Mandate of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression" (24 April 2019) <https://www.ohchr.org/Documents/Issues/Opinion/Legislation/OL_SGP_3_2019.pdf> accessed 9 February 2020.

⁶ Bhavan Jaipragas, "Singapore's opposition calls fake-news bill a 'Damocles sword' hanging over the public" (*South China Morning Post*, 7 May 2019) <<https://www.scmp.com/week-asia/politics/article/3009263/singapores-opposition-calls-fake-news-bill-damocles-sword>> accessed 9 February 2020.

⁷ See Ellie Bothwell, "Singapore 'fake news' law 'threatens academic freedom worldwide'" (*Times Higher Education*, 23 April 2019) <<https://www.timeshighereducation.com/news/singapore-fake-news-law-threatens-academic-freedom-worldwide>> accessed 9 February 2020.

⁸ See Fabian Koh, "Academics reject MOE's assurances on fake news Bill, want assurances reflected in the legislation" (*The Straits Times*, 13 April 2019) <https://www.straitstimes.com/singapore/academics-reject-moes-assurances-on-fake-news-bill-want-assurances-reflected-in-the?cx_testId=0&cx_testVariant=cx_2&cx_artPos=0#cx-recs_s> accessed 9 February 2020.

⁹ Ong Ye Kung (Minister for Education), speech during the Second Reading of the Protection from Online Falsehoods and Manipulation Bill, *Singapore Parliamentary Debates, Official Report* (8 May 2019), vol 94.

¹⁰ See Fathin Ungku, "Factbox: 'Fake News' laws around the world" (Reuters, 2 April 2019) <<https://www.reuters.com/article/us-singapore-politics-fakenews-factbox/factbox-fake-news-laws-around-the-world-idUSKCN1RE0XN>> accessed 9 February 2020.

¹¹ Jothie Rajah, "Policing Religion: Discursive Excursions into Singapore's Maintenance of Religious Harmony Act", in Penelope Nicholson and Sarah Biddulph (eds.), *Examining Practice, Interrogating Theory: Comparative Legal Studies in Asia* (Brill, 2008).

takes effect immediately rather than after 14 days post-amendment. Second, the amended MRHA requires the governing bodies and top leadership of religious organizations be comprised mostly of Singapore citizens or permanent residents. Third, the amended MRHA introduces a new disclosure requirement, whereby religious organisations have to declare one-time donations of \$10,000 and above from foreign sources as well as affiliations with any foreign individual or organisation that is in a position to exert control over them. Lastly, the amendments introduce a community remedial initiative (CRI), which enables a person who has allegedly committed an offence under the MRHA to voluntarily undertake remedial action with the offended religious group. These measures may include issuing a public or private apology or participating in activities that promote religious harmony. They are aimed at resolving communal tensions and repair disrupted ties between religious communities using non-penal methods.¹² Consistent with the objectives of restoration and rehabilitation, a person may not be prosecuted for an alleged offence when a CRI in respect of that offence is in force.

Criticism of the amendments was fairly muted, as they refine the MRHA to respond to new technological and geopolitical developments, and are justifiable. Furthermore, the formalization of the CRI ensures that the MRHA prioritises reconciliation over criminal sanctions. The amendments also reflect the power of consultation – religious organizations in Singapore were largely supportive of the new measures because they were closely con-

sulted before the changes were introduced. The Government also promised assistance to smaller religious organizations to help them meet the new reporting requirements.

III. CONSTITUTIONAL CASES

1. Nagaenthiran a/l K Dharmalingam v Public Prosecutor: Judicial Power and Justiciability

The separation of powers is a foundational principle of Singaporean constitutional law and has been recognized in Singapore as being part of the Constitution's basic structure.¹³ Within this, ensuring the integrity of judicial power, enshrined in Article 93 of the Constitution, has become a key focal point for constitutional argumentation in Singapore.¹⁴ The case of *Nagaenthiran a/l K Dharmalingam v Attorney-General*, an appeal from a High Court decision summarized in last year's *Global Review*,¹⁵ concerned the issue of when, if at all, legislation can oust the court's power to review executive action without violating the Constitution.

The challenge was brought by an offender who had been convicted of a capital offence of drug trafficking under the Misuse of Drugs Act (MDA).¹⁶ A person convicted of such a charge could escape the death penalty if he was merely a drug courier and was certified by the Public Prosecutor (PP) to have "substantively assisted" the Central Narcotics Bureau in disrupting drug trafficking activities in or outside Singapore.¹⁷ In this case, the PP had declined to grant the appellant a certificate of substantive assistance. The ap-

pellant unsuccessfully sought leave from the High Court to challenge the PP's decision. Before the Court of Appeal, he contended that leave should be granted because the PP's decision was made: (a) without taking into account relevant considerations; and (b) in the absence of a precedent fact.

The anterior question for the Court was whether section 33B(4) of the MDA ousted the supervisory jurisdiction of the courts over the PP's non-certification decision except on the grounds of bad faith, malice, and unconstitutionality.¹⁸ Section 33B(4) reads:

The determination of whether or not any person has substantively assisted the Central Narcotics Bureau in disrupting drug trafficking activities shall be at the sole discretion of the Public Prosecutor and no action or proceeding shall lie against the Public Prosecutor in relation to any such determination unless it is proved to the court that the determination was done in bad faith or with malice.

The Court first drew a distinction between clauses that oust or exclude the court's jurisdiction or authority to act in a matter and clauses that immunise parties from suit or liability.¹⁹ The latter were exceptional preclusions, commonly enacted to protect persons carrying out public functions. In the Court's judgment, section 33B(4) of the MDA was not an ouster clause; rather, it immunised the PP, when acting under s 33B of the MDA, from suit save on the stated grounds.²⁰ Two concerns dominated its reasoning in this re-

¹² Sun Xueling (Senior Parliamentary Secretary to the Minister for Home Affairs), speech during the Second Reading of the Maintenance of Religious Harmony (Amendment) Bill, *Singapore Parliamentary Debates*, Official Report (7 October 2019), vol 94.

¹³ *Yong Vui Kong v Public Prosecutor* [2015] 2 SLR 1129, [69] (Court of Appeal); note, however, that the Court of Appeal declined to conclude whether the basic structure doctrine formed part of Singapore law and, even if it did, what its extent or effect would be: at [71]–[72].

¹⁴ See Jaclyn L. Neo, "Autonomy, Deference and Control: Judicial Doctrine of Separation of Powers in Singapore" (2018) 5 JICL 461, generally.

¹⁵ *Nagaenthiran a/l K Dharmalingam v Attorney-General* [2018] SGHC 112 (High Court). Jaclyn L. Neo [et al.], "Singapore", in Richard Albert [et al.] (eds.), *2018 Global Review of Constitutional Law* (I-CONnect and the Clough Center for the Study of Constitutional Democracy at Boston College, 2019) 263, 266–267.

¹⁶ Cap 185, 2008 Rev Ed. See MDA s 33B(2)(b). Under the MDA, the death penalty is a prescribed punishment only where the quantity of drugs trafficked exceeds a prescribed threshold.

¹⁷ *Ibid* s 33B(2).

¹⁸ The former two grounds are expressly provided in MDA s 33B(4). The ground of constitutionality is premised on *Muhammad Ridzuan bin Mohd Ali v Attorney-General* [2015] 5 SLR 1222, [35] (Court of Appeal).

¹⁹ [2019] 2 SLR 216 [47] (Court of Appeal).

²⁰ *Ibid* [51].

gard: respect for the separation of powers and the judiciary's institutional competence.²¹

The upshot of the Court's interpretation of section 33B(4) was that the judicial review of the PP's non-certification decision on the usual grounds such as illegality, irrationality, and procedural impropriety was not excluded.²² The Court provided a glimpse into the reasoning it might have employed had section 33B(4) truly purported to oust the court's power to review the legality of the PP's non-certification. A clause ousting judicial review, the Court observed, would be constitutionally suspect for being in violation of Article 93 of the Constitution as well as the principle of the separation of powers.²³ Such review was directed at the legality and propriety of decision-making and the upholding of the rule of law, which were matters that the judiciary was well placed to adjudicate on.²⁴ Thus, the Court held that a review of the merits of the PP's non-certification decision was neither within judicial competence nor suitable for judicial inquiry.²⁵ By preventing an aggrieved offender from forcing the court to determine an issue that it was not inherently capable of determining, the conferral by section 33B(4) of immunity from suit augmented the conventional legality-merits distinction in Singaporean administrative law.

2. *Wong Souk Yee v. Attorney-General: Group Representation Constituencies*

The Court of Appeal judgment in *Wong Souk Yee v Attorney-General*²⁶ had important implications for constitutional interpretation and the right to vote in Singapore. Also an appeal from a decision summarized in last

year's *Global Review*,²⁷ the case came about when a Member of Parliament (MP) in a Group Representation Constituency (GRC) resigned. Under Singapore's system of parliamentary representation, electoral districts are either Single Member Constituencies (SMCs), where one candidate is elected an MP, or GRCs, where voters cast their ballots for a team of candidates, at least one of whom must be from an ethnic minority community. The initial rationale for introducing GRCs was to ensure minority representation in Parliament.

The key issue was whether the Government must call a by-election in order to fill a single vacancy in the GRC. Under section 24(2A) of the Parliamentary Elections Act,²⁸ there is no requirement for a by-election. It states:

In respect of any group representation constituency, no writ shall be issued [...] for an election to fill any vacancy unless all the Members for that constituency have vacated their seats in Parliament.

The applicant, a resident of Marsiling–Yew Tee who had stood for election in the constituency at the 2015 general election, argued before the High Court that this provision was inconsistent with Article 49(1) of the Constitution. Article 49(1) states:

Whenever the seat of a Member, not being a non-constituency Member, has become vacant for any reason other than a dissolution of Parliament, the vacancy shall be filled by election in the manner provided by or under any law relating to Parliamentary elections for the time being in force.

The applicant also argued that a requirement for a by-election when a single member of a GRC vacates her seat was the necessary implication of a citizen's constitutional right to vote. The High Court dismissed both these arguments.

The Court of Appeal upheld the High Court's decision, though it disagreed with its reasoning. The Court reconciled Article 49(1) with section 24(2A) by essentially narrowing the scope of the constitutional provision. The Court noted that when Article 49(1) was enacted in 1965, GRCs did not exist. Thus, how the Article applied to GRCs was unclear. Indeed, both parties agreed that there must have been a legislative oversight when drafting the constitutional amendments which implemented the GRC scheme. As such, reference to extraneous materials was deemed necessary to ascertain the true meaning of Article 49(1).²⁹ Parliamentary debates showed that the intention was not to call a by-election unless all the seats in a GRC had been vacated, as per section 24(2A) of the PEA.

While the High Court had sought to apply either a rectifying or updating construction to Article 49(1), the Court of Appeal expressed doubt about whether it was proper to apply these approaches towards statutory construction to constitutional provisions as the latter "are designed to be more deeply entrenched and are generally regarded as fundamental in nature".³⁰ A rectifying construction was ruled out because it could not be said with sufficient certainty what additional words the drafter would have inserted into the Article, while an updating construction also could not be adopted as it was not clear that Parlia-

²¹ Ibid [66]–[67].

²² Ibid [51].

²³ Ibid [71]–[74].

²⁴ Ibid.

²⁵ Ibid [58]–[59], [64]–[66].

²⁶ [2019] 1 SLR 1223 (Court of Appeal).

²⁷ *Wong Souk Yee v Attorney-General* [2018] SGHC 80 (High Court). See Neo [et al.], "Singapore" (n 14) 263, 265–266.

²⁸ Cap 218, 2011 Rev Ed.

²⁹ *Wong Souk Yee* (n 25) [28]–[48]. See the Interpretation Act (Cap 1, 2002 Rev Ed), s 9A(2)(b)(i): "[I]n the interpretation of a provision of a written law, if any material not forming part of the written law is capable of assisting in the ascertainment of the meaning of the provision, consideration may be given to that material [...] to ascertain the meaning of the provision when [...] the provision is ambiguous or obscure".

³⁰ Ibid [64].

ment had intended to make such substantial changes to the Article.³¹ Without specifying the applicable rule of construction for Article 49(1), the Court upheld the interpretation of Article 49(1) that was in line with the parliamentary intention behind the PEA, namely that Article 49(1) only referred to SMCs. The Court was concerned that it should not adopt an interpretation that would require additional words to be read into the Article, which might be seen as too adventurous.

The case strikes at the core of a critical constitutional debate in Singapore involving the proper role of the courts in adjudicating the constitutionality of legislative acts. While the Court of Appeal affirmed the supremacy of the Constitution, it was concerned that it would not be seen as engaging in “judicial legislation” and “overstepping [its] constitutional role”.³² On the right to representation, the Court was careful to say that even if such a right was implied in the Constitution’s basic structure, it would not mandate a particular form of representation as “fundamental and essential” to the Westminster model of government and thus immutable. In other words, there was nothing in principle preventing Parliament from allowing a GRC to be represented by fewer than its full complement of MPs if some of them had vacated their seats.³³

3. *Li Shengwu v Attorney-General: Scandalizing Contempt of Court*

While recent decisions have illuminated the scope and effect of Article 93 of the Constitution within Singapore’s domestic

constitutional system, *Li Shengwu v Attorney-General*³⁴ was the first decision to have explored its potential international effects. There, committal proceedings were instituted against the applicant for his alleged act of scandalizing the judiciary, and committal papers were served on him in the United States. The applicant challenged the court’s jurisdiction to allow such service, a matter which the Court of Appeal acknowledged had never before been subject to considered judicial scrutiny.³⁵

The Court’s inquiry into its international jurisdiction involved two elements: its “subject-matter jurisdiction” over the matter, and its personal jurisdiction over the alleged contemnor. Personal jurisdiction could be established through the ordinary civil process, under Order 11, rule 1 of the Rules of Court. However, the Court did not appear to establish its “subject-matter jurisdiction” by appealing to its international criminal or civil jurisdiction under the Supreme Court of Judicature Act.³⁶ Indeed, the Court held that had its international criminal jurisdiction been invoked, service out could only be achieved with foreign assistance, which had not been sought.³⁷ Moreover, by bifurcating its jurisdictional inquiry as it did, the Court clearly did not apply its ordinary test for international civil jurisdiction.³⁸

Instead, the source of the Court’s “subject-matter jurisdiction” to allow service out for contempt of court was its “inherent jurisdiction”, flowing from the “judicial power” under Article 93 of the Constitution.³⁹ Thus, after *Li Shengwu*, it appears that Singapore’s

courts have “subject-matter jurisdiction” to allow proceedings to be served out of the jurisdiction as long as the underlying cause of action is “inherent” to the judicial power under Article 93. It remains unclear whether, besides contempt of court proceedings, other such proceedings exist.

4. *Wham Kwok Han Jolovan v Public Prosecutor: Freedom of Assembly*

In *Wham Kwok Han Jolovan v Public Prosecutor*,⁴⁰ the High Court considered the consistency of section 16 of Singapore’s Public Order Act (POA) with a citizen’s right of assembly under Article 14(2)(b) of the Constitution. Section 7 of the POA grants the Commissioner of Police discretion to issue or refuse a permit to organize a public assembly while section 16 makes it a criminal offence to organize a public assembly without such a permit. The applicant was prosecuted under section 16, and argued, *inter alia*, that the section contravened his right of assembly. This was because section 16 imposes criminal liability even if the executive decision which forms an element of the offence (here, the Commissioner’s decision to refuse a permit under section 7) was unlawful under established administrative law principles.⁴¹

The Court rejected the applicant’s argument on two grounds. First, it opined that where an accused was denied a section 7 permit but went ahead to hold the public assembly anyway, he would be engaging in “vigilante conduct” which “cannot be condoned”.⁴² Second, the Court held that the applicant’s submission relied on a “wholly speculative

³¹ Ibid [66]-[69].

³² Ibid [75].

³³ Ibid [76]-[78].

³⁴ [2019] 1 SLR 1081 (Court of Appeal).

³⁵ Ibid [124].

³⁶ Cap 322, 2007 Rev Ed.

³⁷ *Li Shengwu* (n 33) [92]-[93].

³⁸ *Cf Burgundy Global Exploration Corp v Transocean Offshore International Ventures* [2014] 3 SLR 381, [88] (Court of Appeal), where, in the context of civil proceedings, the Court of Appeal held that doctrine of “subject-matter jurisdiction” was merely the interpretative “presumption against extra-territoriality” applicable to statutory provisions conferring personal jurisdiction, not a separate and additional requirement that applicants seeking leave to effect service out must fulfill.

³⁹ *Li Shengwu* (n 33) [99] and [109].

⁴⁰ [2019] SGHC 251 (High Court).

⁴¹ Ibid [26].

⁴² Ibid [25].

and unsubstantiated” assumption that the Commissioner “may act in bad faith”, which could not support a finding of unconstitutionality, especially given the “established principle that acts of high officials of state should be accorded a presumption of legality or regularity”.⁴³

The decision in *Jolovan Wham* is the first to have invoked the presumption of regularity, applicable to exercises of executive decision-making powers, in response to a challenge to the constitutionality of legislation. One may question whether the Court should have invoked the presumption of constitutionality, applicable to legislation passed by Parliament, instead.⁴⁴ Moreover, to the extent that the Court’s decision on the constitutionality of section 16 of the POA rested on a need to deter “vigilante conduct”, it is somewhat circular. Since Article 4 of Singapore’s Constitution states that any statutory provision “which is inconsistent with [the] Constitution shall [...] be void”, conduct contravening section 16 can only meaningfully be called “vigilante conduct” if that provision is in fact constitutional. If the constitutionality of section 16 of the POA is ever canvassed before the Court of Appeal, clarifications on these matters would be welcome.

5. *Aljunied-Hougang Town Council v Lim Swee Lian Sylvia*: Town Councils

Although the case of *Aljunied-Hougang Town Council v Lim Swee Lian Sylvia*⁴⁵ did not directly raise constitutional questions, it

has significant constitutional implications insofar as it determines the role and responsibilities of parliamentarians in managing Town Councils. Under Singapore’s Town Councils Act,⁴⁶ elected MPs are also appointed to Town Councils having governance over, and estate management duties in relation to, the constituencies they represent in Parliament. The intertwining of parliamentary duties with Town Council management is a significant innovation in Singapore.⁴⁷

The High Court held that town councilors, while an office created by statute, owe fiduciary obligations to the Town Council, a body corporate.⁴⁸ Their position vis-à-vis the Town Council was one of trust and confidence, not dissimilar to that of company directors. Thus, town councilors must manage the estate and serve the interests of their Town Council with single-minded loyalty and for proper purposes.⁴⁹ However, the Court also noted that town councilors did not owe fiduciary duties to the residents within a Town Council’s constituency, since, under Singapore’s system of government, citizens hold their elected MPs to account primarily through the ballot box.⁵⁰ Nevertheless, it emphasized that the fiduciary duties town councilors owe to Town Councils were “entirely distinct from the political relationship between town councilors and their constituents”.⁵¹

On the facts, the Court found the various defendants liable for an assortment of breaches of fiduciary duties (of good faith and non-conflict of interest) and duties of skill

and care by, *inter alia*, waiving procurement tenders without adequate reason and making payments to conflicted parties.⁵² The Court further held that the statutory defence of good faith only shielded town councilors from liability to third parties for acts done in their capacity as town councilors and not from liability to the Town Council itself.⁵³ The case is novel for the deployment of private law to safeguard and enforce the proper and good faith management of public resources. The fact that the defendants were opposition MPs unfortunately colored the proceedings and made it a more political case than the facts would have shown.⁵⁴

IV. LOOKING AHEAD

The year 2020 looks set to be a year of significant constitutional and political significance for Singapore. The High Court is set to issue its judgment on three constitutional challenges heard in 2019 on the constitutionality of section 377A of the Penal Code, which criminalizes male homosexual intercourse. Of relevance here is the publication of an article by former Chief Justice Chan Sek Keong, forwarding various arguments against the constitutionality of section 377A, which parties relied on heavily in court. Moreover, the Government’s use of POFMA and the judiciary’s role in overseeing the legality thereof will be of key interest, especially since an opposition party has sought to appeal a Correction Direction issued against it.⁵⁵ All this will likely take place against the backdrop of general elections, which the rul-

⁴³ Ibid [27]-[29].

⁴⁴ See Public Prosecutor v Taw Cheng Kong [1998] 2 SLR(R) 489 [60]-[61] and [77]-[79] (Court of Appeal).

⁴⁵ [2019] SGHC 241 (High Court).

⁴⁶ Cap 392A, 2000 Rev Ed.

⁴⁷ Ibid ss 8-9.

⁴⁸ *Sylvia Lim* (n 44) [175] [191] [212] [216] [218] [223] and [225].

⁴⁹ Ibid [218].

⁵⁰ Ibid [189] and [219].

⁵¹ Ibid [219].

⁵² See Ibid [634] for a summary of liabilities.

⁵³ Ibid [494]-[498].

⁵⁴ See, e.g., the discussion in “FactCheck: Were the posts by ‘Fabrications About the PAP’ regarding the AHTC and PRPTC lawsuits against members of the Workers’ Party correct?” (Black Dot Research, 17 October 2019) <<https://blackdotresearch.sg/factcheck-were-the-posts-by-fabrications-about-the-pap-regarding-the-ahtc-and-prptc-lawsuits-against-members-of-the-workers-party-correct/>> accessed 9 February 2020.

⁵⁵ See Janice Lim, “SDP files first High Court appeal to challenge manpower minister’s POFMA action” (TODAY, 8 January 2020) <<https://www.todayonline.com/singapore/sdp-files-first-high-court-appeal-challenge-manpower-ministers-pofma-action>> accessed 9 February 2020.

ing People's Action Party intends to hold in 2020, and which will likely see leadership renewal for the party and Singapore.⁵⁶

V. FURTHER READING

Kevin YL Tan & Bui Ngoc Son (eds.), *Constitutional Foundings in Southeast Asia* (Hart Publishing, 2019)

Jaclyn Neo and Andrea Ong, "Making the Singapore Constitution: Amendments as Constitution-Making", 14(1) *Journal of Comparative Law* 72 (2019)

Jaclyn L Neo & Ngoc Son Bui (eds.), *Pluralist Constitutions in Southeast Asia* (Hart Publishing, 2019)

Chan Sek Keong, "Equal Justice under the Constitution and Section 377A of the Penal Code: The Roads Not Taken" (2019), 31 *SAC LJ* 773

Marcus Teo, "Service out for Scandalising Contempt: An International Constitutional Jurisdiction?" (2019), *SJLS* 477

⁵⁶ See generally Royston Sim, "Next GE will decide if Singapore can sustain a good, stable Govt: PM Lee Hsien Loong" (*The Straits Times*, 10 November 2019) <<https://www.straitstimes.com/politics/pap-convention-next-ge-will-decide-if-singapore-can-sustain-a-good-stable-government-says>> accessed 9 February 2019.

2019 was characterized by a constitutional conflict between the President and Parliament leading up to the impeachment of the head of state. Because the opposition boycotted the local election, only a single candidate ran in most municipalities, winning by default. The implementation of justice reform slowly progressed throughout the year, affecting the renewal of justice institutions.

In an election year, the Supreme Court was not at the forefront of public discussion. However, a handful of important and politically charged decisions timidly evinced the emergence of a majority inclined to check the government and protect some rights. Political change and economic turbulence may alter this.

Religious freedom dominated public consciousness in 2019 as the government consulted on and developed a Religious Discrimination Bill to be introduced to Parliament in February 2020. If passed, the Bill will protect against religious discrimination (and discrimination against atheists and agnostics) and establish a Freedom of Religion Commissioner.

Austria

In 2019, the Federal Government's breakdown after the "Ibiza scandal" ended a phase of bold legislative reforms that also induced the Constitutional Court to examine several and repeal part of them. The Federal Constitution proved to be a highly stabilizing factor during the breakdown phase and following political events.

Bangladesh

The Awami League commenced its third consecutive term. The BNP, the real opposition to the ruling party, joined the current parliament with just six seats after five years. The larger Supreme Court mostly showed reluctance on civil rights. But its activism in compensation and gender-based violence cases attracted appreciation.

Belgium

Elections were held and resulted in an arduous formation process of the federal government. Moreover, an attempt to amend Article 7bis of the Constitution in order to adopt a "Special Climate Act" was unsuccessful, yet the provision was again included in the list of articles that can be amended.

Bosnia and Herzegovina

The distribution of mandates after the elections in 2018 proved to be a contentious issue in Bosnia and Herzegovina. Despite the decisions of the Constitutional Court, political stakeholders held that impugnable constitutional provisions were still in effect. This put enormous pressure on the Election Commission of the country.

Brazil

Brazil under President Bolsonaro, a populist with an explicit authoritarian mindset, is certainly a threatening scenario for democracy. Interestingly enough, Brazil's democracy, up to this point, has shown some resilience and

its institutions have provided a reasonable degree of horizontal accountability.

Bulgaria

For Bulgaria, 2019 was marked by rising tensions among the highest echelons of state power, particularly between the President and the government. Against this background, the most significant constitutional developments concerned the controversial appointment of a new chief prosecutor and a long-overdue reform aimed at ending the impunity of this office.

Canada

In June, the legislature of the province of Québec made a rare use of the Canadian Charter's 'notwithstanding clause' in passing an act to prohibit public sector employees 'in a position of authority' from wearing religious symbols at work. Four lawsuits challenging the constitutionality of the act ensued.

Cape Verde

The year 2019 was especially marked by an increase of constitutional complaints lodged with the Constitutional Court, and subsequently to the continuous development of case law in the field of protection of accused persons in the criminal framework and in other proceedings that led to the application of sanctions.

Chile

The constitutional reform of December 24, which was the result of a bipartisan agreement that tried to offer a political way out of a crisis, established the steps of a Constitution-making process that, if successful, will generate a total constitutional replacement.

Colombia

The core 2019 constitutional developments concerned matters on limitations to free-

doms, gender equality, and non-discrimination between nationals and non-nationals; the protection of the environment; and the relationships between constitutional law, on the one hand, and international investment law and inter-American human rights law on the other.

Costa Rica

Politicians' growing dissatisfaction with the Constitutional Court's exercise of its review powers engendered a backlash in Congress that resulted in significant delays in the election of new magistrates and a highly contentious debate over the fairness of the procedures used to elect them to the country's apex court.

Croatia

2019 was marked by important decisions of the Constitutional Court on the protection of the freedom of thought and expression. The Court underlined that protecting freedom of expression not only relates to non-offensive information and/or ideas but also 'to those which are offensive, shocking or disturbing'. This has implications for democratic dissent.

Cyprus

2019 was marked by a significant amendment of the Cypriot Constitution. It introduced the notion of 'non-taken parliamentary seats' in an attempt to fill the 56th seat that remained vacant following the 2016 parliamentary elections due to the impasse created by the non-affirmation of one of the elected candidates.

Czech Republic

In 2019, the Senate prepared a constitutional charge against President Zeman, claiming serious breaches of the Constitution. However, it was rejected by the Chamber of Deputies, mostly thanks to the votes of PM

Babiš's party, ANO. Also, the investigation of PM Babiš's conflicts of interest continued on national and European levels.

Denmark

The new government strengthened the state but was accused of arrogating judicial power to its own hand through a new law aimed at revoking citizenship, while a large majority of MPs agreed to adopt an ambitious climate law, expected to influence Danish politics for a decade.

Dominican Republic

Through several decisions on political party and electoral laws in 2019, the Constitutional Court made key decisions regulating both the internal organization of political parties and the political competition between them. The Court is now firmly placed at the center stage of Dominican politics.

Ecuador

The transitory Council for Public Participation and Social Control dissolved and appointed several public officials, and also gave birth to a new Constitutional Court. While there have been crucial steps made towards a stronger constitutional democracy, the fruits of this transition are still to be seen after a much-anticipated period of consolidation.

Egypt

The most significant development in Egypt's constitutional status in 2019 was the constitutional amendments adopted in late April. Those amendments widened the scope and level of the executive branch's power vis-à-vis other authorities, and gave the military a new constitutional duty of protecting the Constitution and democratic pillars of the country.

Estonia

2019 was marked by elections to the Estonian Parliament. They had a decisive effect on the claims the Supreme Court had to deal

with and brought the so-called far right into government. This led to a tense relationship between the government and the president and raised several constitutional issues.

Finland

The proposed legislation on civil and military intelligence and on the oversight of intelligence gathering, the implementation of which Section 10 of the Constitution of Finland on the secrecy of confidential communications had been amended, was approved by the Parliament and entered into force on 1 June 2019.

France

In a period of intense social protest and claims for a renewal of democratic participation, the Constitutional Council ruled for the first time on a joint Parliament- and citizen-initiated referendum. It also reviewed major bills relating to the right to protest and a major reform of the judicial system.

Gambia

2019 saw The Gambia move from setting up key institutions such as the Constitutional Review Commission (CRC); Truth, Reconciliation, and Reparations Commission (TRRC); and National Human Rights Commission (NHRC) to actualising the key transitional justice standards required to restore the rule of law and democracy to the country.

Georgia

This report provides a brief introduction to the constitutional system of Georgia, constitutional amendments, civil protest, local elections, media, and main challenges facing the judiciary. It also provides an overview of landmark judgments of the Constitutional Court in 2019 and developments expected in 2020, including court vacancies, court cases, and other related events.

Germany

The federal Constitutional Court recalibrated its stance towards the European Union,

also ruling for the first time on the digital right to be forgotten. In short, the Court promoted the EU Charter of Fundamental Rights to the constitutional standard of review when EU law is applicable.

Ghana

The most important development in 2019 emerged from the decision of the Supreme Court to uphold state resource expenditures on one particular religion if they benefit society as a whole. As a legally secular, culturally multi-religious society, Ghana can ill afford religious disaffection. Religious equality was guaranteed in the 1992 Constitution to prevent that.

Greece

A toothless yet useful constitutional revision marked 2019. The Constitution had remained formally unaltered throughout a crisis, first because of a mandatory time lapse between revisions and then due to a lack of consensus. Nine out of forty-nine proposed amendments were made. All formal change is now frozen for many years.

Greenland

The most important constitutional development was the unilateral decision to draft a subregional constitution for Greenland in two stages: the first, to enter into force under the Danish constitutional framework; the second to take effect only when (or if) Greenland becomes independent.

Guatemala

2019 was a year marked by the intervention of the Constitutional Court in the election and selection of the traditional powers of the state: Executive, Congress and the Judiciary. However, this came at a cost. The year was also marked by strong backlash against the Constitutional Court.

Hong Kong

Misjudgment of public opinion by the Hong Kong and Chinese Governments contributed to the mass civil unrest in 2019. The state's hardline approach against the protestors prompted further violence. The Hong Kong judiciary's independence and credibility were tested as disputes related to the movement found their way to the courts.

Hungary

Government influence on courts increased in 2019. Although amending actors abandoned the idea of establishing a separate administrative court system through the 8th Amendment to the Fundamental Law, new statutory provisions constrained judicial power to interpret legal and constitutional rules. Institutional tensions in the entire judicial system increased.

India

In 2019, the Indian state of Jammu and Kashmir lost its constitutional status as a semi-autonomous region and was brought under complete federal control. The absence of public consultation contributed to widespread protests at the annulment of the historical guarantee granted at its accession to the Indian union.

Indonesia

In 2014, the Court issued a decision on the simultaneous general election. But the Court has come under fire after around 400 polling station workers died in the 2019 election. In this term, the Court has to decide on whether to nullify its decision or re-affirm the simultaneous election.

Iran

The gas price hike regulations in November 2019 via the Supreme Council for Economic Coordination (SCEC) put the Constitution on edge. They opened several fractures between the latent conflicts in the Constitution, making constitutional dysfunctions more clearly and dramatically visible.

Ireland

2019 saw the passage of legislation to establish a Judicial Council. This had been discussed for over two decades, with the senior judiciary becoming increasingly vocal on the issue in recent years. The Council will have responsibility for judicial conduct, disciplinary matters, training and representation.

Israel

The most important developments in Israeli constitutional law in 2019 were the political deadlock resulting in recurring general elections and the unprecedented criminal indictment of a sitting Prime Minister, Benjamin Netanyahu, for bribery, fraud and breach of trust. These two combined to generate a constitutional crisis in Israel.

Italy

In 2019, the Italian Constitutional Court ruled in continuity with its most recent case law and strengthened its institutional role by coordinating the exercise of its powers and competences with both other constitutional actors and supranational institutions.

Kazakhstan

2019 was marked by the surprising voluntary resignation of the country's first President, Nazarbayev, in the spring, and the transfer of the presidential office to Tokayev, former Senate Speaker, in the summer. The Constitutional Council of Kazakhstan upheld these developments.

Kenya

The most important constitutional development was something that has not happened – yet. Namely, a debate about whether to make major shifts, and whether by a referendum, in the system of government, with the purpose of creating one that is more inclusive (especially of ethnic groups).

Luxembourg

The dominant theme in Luxembourg remained the questions of whether and how the Constitution should be rewritten. This long-lasting discussion came to a sudden end in November 2019. The transformation of the Constitution into a “living instrument,” however, continues to occupy all institutions, notably the strengthened Constitutional Court.

Malaysia

Securing meaningful reform in the post-transition era remained the main challenge in Malaysia, given the formidable vested interests against it. Abortive attempts by the new government to amend the Federal Constitution and to ratify several international conventions emphasized the areas in which reform is needed, as well as the challenges ahead.

Mexico

The National Guard (a civil police institution composed of members of the Federal, Military, and Naval Police responsible for guaranteeing public security) was introduced in the Constitution. The Constitution was also amended to introduce the revocation of the mandate as a popular consultation mechanism that will be applied to the President.

Montenegro

The year was not marked by major constitutional developments but controversies and challenges to the autonomy and consistency of the judicial authorities and their commitment to the rule of law, particularly the power imbalance between the Constitutional Court and the Supreme Court.

Nepal

The implementation and operationalisation of the 2015 Constitution remained the primary constitutional focus. Federalisation persisted as a significant challenge. While the ineffective transfer of governmental

responsibility to subnational governments spurred intergovernmental conflict and weakened the foundations for federalism, devolution appears to be conferring new forms of legitimacy on government.

New Zealand

In response to the March 15 gun attack on two mosques by a lone far-right extremist, which murdered 51 people and injured another 49, New Zealand had to reconsider a swathe of laws relating to gun ownership and terrorist activity.

Nigeria

Nigeria's democratic trajectory seemed to veer off course in 2019. Pre- and post-election violence and the threat of violence and electoral manipulation marred the 2019 general elections. Also, horizontal accountability mechanisms appeared to weaken during the period. A course correction will be required in the coming years.

North Macedonia

Combatting impunity in high-level corruption cases remained a challenge in 2019 as citizens still awaited the prosecution and punishment of high-level officials involved in wire-tapping scandals from 2015. Fighting corruption is a precondition for the country's EU integration, especially after its historic name change this year.

Norway

Following unlawful administration of social welfare benefits, citizens were wrongfully convicted. The secret police unlawfully collected airline passenger data. Central cases concerned retention of DNA profiles, the Norway-EFTA Court relationship, and children's right to privacy in social media. In the ECtHR, cases about the Norwegian child welfare system dominated.

Palestine

Palestinian President Mahmoud Abbas dissolved the Palestinian Legislative Council but did not call for new elections as per the SCC ruling on the matter. He also replaced the sitting High Judicial Council with a temporary one. This concentration of powers makes it harder to counteract his power/s and ensure accountability in government.

Peru

In 2019, Peru managed to overcome a tough fight between the legislative and the executive, which culminated in the closure of Congress, by constitutional means. Since Peru has a history of overcoming political crises by coup d'états, this cannot be overstated.

Poland

In 2019, the rule of law further deteriorated in Poland, including the undermining of the judiciary's independence. This was possible by applying legal measures that were introduced in previous years. In December, the first chamber of Parliament passed a law allowing the extensive punishment of judges.

Portugal

2019 was a year marked by elections and, subsequently, parliamentary fragmentation, governmental change, and social contestation (with the summoning of several strikes and manifestations by dissatisfied professional sectors). The Constitutional Court dealt with issues such as surrogacy, citizenship, data protection, and paternity proceedings, revisiting some of its previous jurisprudence.

Romania

The most important development of 2019, besides the Constitutional Court's involvement in the political and judicial spheres, was a significant shift in the options of the electorate, manifested in the outcome of three major popular consultations. This led to an unexpected but rather conjunctural

change of parliamentary majority and to the change of Government.

Russia

The Constitutional Court continued a trend of consistent political subordination that dates back to the entry into force of the current Constitution. It has never been an independent actor and does not deal with politically sensitive issues. However, it plays a significant role in the protection of social and economic rights.

Serbia

In June 2019, the Committee on Constitutional and Legislative Issues of the National Assembly accepted the Government's initiative for constitutional changes. However, due to the forthcoming parliamentary elections in spring 2020, it is upon the new legislature to continue and, most likely, finish the procedure.

Singapore

Besides the usual constitutional issues, it was the enactment of the Protection from Online Falsehoods and Manipulation Act that had the strongest constitutional impact in 2019, and beyond. By regulating online falsehoods, the law attempts to balance freedom of speech against the integrity of democracy and other public interests.

Slovakia

In a historic ruling, the Slovak Constitutional Court held that the Constitution contains an implicit material core that cannot be changed through the ordinary amendment process. If an amendment violates a core provision, it will be struck down. The Court's composition changed dramatically in 2019, possibly having implications for the endurance of this ruling.

Slovenia

In 2019, the Constitutional Court rendered several precedential and important decisions, strengthening the protection of

human rights and fundamental freedoms. While the Court continues to be regarded as the most reliable rule-of-law institution in Slovenia, its stature was diminished in 2019, in particular due to its growing ineffectiveness.

South Africa

The proposed amendment of section 25 of the Constitution, intended to allow the government to seize property without compensation, continued to be an ongoing project reflecting accelerated creeping socialism and a concomitant decline of constitutionalism amidst ongoing revelations of corruption and attempts to remedy its consequences. Meanwhile, lively constitutional litigation continued.

South Korea

The South Korean Constitutional Court decided on the nonconformity to the Constitution of the abortion ban; the Moon administration was criticized for returning two North Korean fishermen demanding asylum to the North; and the scandal surrounding Kuk Cho, the former Minister of Justice, deeply disappointed the Korean people.

Spain

Judgment 89/2019 reviewed the constitutionality of the process of activation and application of the instrument of state coercion on autonomous communities in case of serious non-compliance with the constitutional system. The article was applied for the first time by the government following the events in Catalonia in autumn 2017.

Sri Lanka

The 2019 presidential election ended the government elected in 2015 to strengthen democracy and good governance through constitutional reform. With the country turning to strong leadership, the new President, Gotabhaya Rajapaksa, offered an alternative vision of nationalist authoritarianism. A pe-

riod of democratic regression has followed.

Sweden

Three constitutional issues dominated the Swedish constitutional law debate in 2019: the relationship between the Council on Legislation and the Government, the criminalization of joining and supporting terrorist organizations and the outlawing of racist organizations, and lastly, the constitutional enhancement of the independence of the judiciary.

Switzerland

The Green Party won the general election to the Federal Parliament but failed to get a seat in the executive branch. The Federal Court nullified a federal ballot for the first time in history and held that a prohibition barring court officials from wearing ‘visible religious symbols’ in court hearings was constitutional.

Taiwan

Taiwan’s constitutional development in 2019 was reactive in character, with the legislative arena as the main theater. In reaction to the disappointing referenda on the legalization of same-sex marriage in 2018, laws were passed reworking the relationship between referendums and elections while finally realizing marriage equality in law, but without a name.

Thailand

For the first time in Thailand’s history, the military junta successfully became a democratically elected government, regardless of the democratic quality of the Constitution. The regime remains as repressive as ever. However, this arrangement provided a flimsy disguise, posing a challenge to those wishing to question the regime’s legitimacy.

The Netherlands

The government responded to the State Commission’s recommendations to strength-

en the parliamentary system. Also, a temporary parliamentary committee on the digital future was established; the Supreme Court delivered the *Urgenda* climate change judgment; and there were evolutions regarding militant democracy as a response to criminal activities of outlaw motorcycle gangs.

Tunisia

Eight years after its revolution, Tunisia made a milestone step toward the creation of sustainable democracy despite political challenges. The North African resource-poor country managed to complete its third set of elections and, despite imperfections, was hailed as the only democracy in the region.

Turkey

A comprehensive implementation of the new presidential system in Turkey perpetuated executive dominance, eradicated key checks and balances, and pushed the country toward the brink of becoming a constitutional autocracy. Under these worrying circumstances, the Turkish Constitutional Court struggled to give consistent judgments.

United Kingdom

In 2019, the battle between the Government and the House of Commons concerning Brexit intensified. In September 2019, two weeks after the prorogation of Parliament, the Supreme Court unanimously ruled the prorogation ‘unlawful, null, and of no effect’, reaffirming the need for judicial and parliamentary scrutiny of government acts.

Venezuela

In 2019, Venezuela experienced a major constitutional standoff. Following the fraudulent May 2018 presidential election, President Juan Guaidó of the opposition-led legislature acted as Interim President to achieve a democratic transition via elections, yet Nicolás Maduro clung to power supported by the Supreme Tribunal and National Constituent Assembly.

