
J.Y. Interpretation No. 325 (July 23, 1993)*

The Parliamentary Power of Inquiry Case

Issue

Does the Control Yuan retain its status as one of the parliamentary chambers following the Constitutional amendments of 1992? Does the Control Yuan still have the power to make inquiries? On what terms could the Legislative Yuan make its own inquiries?

Holding

J.Y. Interpretation No. 76 holds that the Control Yuan and the other national representative entities are jointly equivalent to the parliament as commonly understood in the world of democracies. However, since Additional Article 15 of the Constitution [later revised and renumbered as Additional Article 7 of the Constitution] was put into practice, the status and powers of the Control Yuan have undergone significant changes to the effect that it can no longer be considered a national representative entity. As such, the aforementioned J.Y. Interpretation is no longer applicable to the Control Yuan. The five-Yuan governmental system of the Constitution remains unchanged, though, and the Additional Articles of the Constitution alter neither the original powers of the Control Yuan to impeach, censure, and rectify, nor its ancillary power to make inquiries as vested by Articles 95 and 96 of the Constitution. In this regard, such powers of inquiry remain the sole prerogatives of the Control Yuan. In order to exercise its constitutional powers and responsibilities, the Legislative Yuan may apply Article 57, Subparagraph 1 and Article 67, Paragraph 2 of the Constitution.

* Translation and Note by Yen-Tu SU

In addition, with resolution of the plenary session or of the respective committee, the Legislative Yuan may request that the relevant authorities provide information concerning the bill under review. If necessary, the Legislative Yuan may request review of the original documents via a plenary Yuan resolution. The respondent authority is obliged to provide the requested information or documents unless the refusal is warranted by law or can otherwise be justified. But there are instances in which the governmental authorities are authorized by the Constitution to act independently. Such examples include legal reasoning of judicial adjudication, the examination authority's grading of examinees, decisions of the members of the Control Yuan on whether to impeach or rectify, and acts, files and evidences concerning the investigation and adjudication of a criminal case that has yet to be closed. The Control Yuan has long refrained from inquiring into decision-making in such institutions. For the same reason, the Legislative Yuan should be refrained from making requests to obtain and review documents from such institutions.

Reasoning

[1] Our Constitution does not use the term "Parliament." Previously, a question was raised as to which entity was to represent our Parliament when such a designation was necessary for the sake of international networking. Upon petition, this Court issued J.Y. Interpretation No. 76, which succinctly holds that "the National Assembly, the Legislative Yuan, and the Control Yuan are jointly equivalent to a parliament as commonly understood in the world of democracies." This Interpretation was essentially grounded on the consideration that these entities were all composed of representatives or members who were directly or indirectly elected by the people, and, in terms of their constitutional status and powers, they were all to be deemed as comparable to parliaments in democratic countries. However, Additional Article 15 of the Constitution [later revised and

renumbered as Additional Article 7 of the Constitution] has rendered inoperable such original constitutional arrangements of the Control Yuan as the indirect election of its members, its power to confirm nominations to certain offices in the Judicial Yuan and the Examination Yuan, and the legislative immunities granted to its members by virtue of their serving as national representatives of the people. Under the aforementioned Additional Article of the Constitution, the Second-Term Members of the Control Yuan are to be nominated and appointed by the President with the consent of the National Assembly. The Control Yuan is thereby no longer a national representative entity, but an institution with a different status and powers. Accordingly, the aforementioned J.Y. Interpretation is no longer applicable to the Control Yuan.

[2] Aside from establishing the National Assembly, the Constitution vests the executive, legislative, judicial, examination, and control powers in the five respective Yuans. With their powers vis-à-vis one another delineated by the Constitution, all of these institutions are the highest organs of the state, and the entire separation of powers is distinct from the separation of the three branches of government that is commonly adopted by other countries. There is no necessary connection, for instance, between the separation of powers of the five Yuans and the designation as to which entity is equivalent to the parliament as commonly understood in the world of democracies. The Additional Articles of the Constitution do not alter the five-Yuan governmental system, nor do they increase the powers of the Legislative Yuan. Since no change is made to the powers of the Control Yuan, such as the powers to censure or impeach public officials in central or local governments for dereliction of duty or violation of law, the power to rectify measures of the Executive Yuan and its affiliate ministries, and the ancillary power to make inquiries as vested by Articles 95 and 96 of the Constitution, these powers remain the sole prerogatives of the Control Yuan.

[3] To enable the Legislative Yuan to function properly, Article 57,

Subparagraph 1 of the Constitution provides that “[t]he Executive Yuan has the responsibility to present to the Legislative Yuan a policy statement and a report on its administration. When the Legislative Yuan is in session, its members have the right to question the Premier and the Ministers of the Executive Yuan.” In the same vein, Article 67, Paragraph 2 of the Constitution provides that “[t]he committees [of the Legislative Yuan] may invite government officials and concerned citizens to attend the committee meetings and answer questions.” In other words, members of the Legislative Yuan may ask or raise questions during sessions and thereby gain information concerning facts or opinions from answers provided by the questioned officials or by the invited attendees. If more information is needed, the Legislative Yuan may request that the relevant authorities provide information concerning the bill under review via a resolution of the Yuan or the respective committee. If necessary, the Legislative Yuan may request review of the original documents via a plenary Yuan resolution. Such arrangements are derived from and pursuant to the Constitutional provisions regarding the assembly and exercise of powers by members of the Legislative Yuan, and the responding authority is obliged to accommodate unless the refusal is warranted by law or can otherwise be justified. But there are instances in which the governmental authorities are authorized by the Constitution to act independently. Judges, for instance, are fundamentally protected by Article 80 of the Constitution to adjudicate cases in accordance with law independently and without any interference. Members of the Examination Yuan and Control Yuan are also protected by Article 88 of the Constitution and Additional Article 15, Paragraph 6 of the Constitution [later revised and renumbered as Additional Article 7, Paragraph 5 of the Constitution] respectively to act independently. Investigations conducted by prosecutors are closely related to criminal trials, and both are critical procedures for the proper exercise of the penal power of the state. Except for being constrained by prosecutorial integration, the ability of

prosecutors to perform their duties independently and without outside interference shall also be protected. A relevant precedent is J.Y. Interpretation No. 13, in which this Court held that, except for their transfer, tenured prosecutors enjoy the same protections as tenured judges. Since the aforementioned personnel are supposed to carry out their responsibilities independently, they should be able to make decisions of their own without outside interference. Therefore, the Control Yuan has long been restrained from inquiring into measures such as the legal reasoning of judicial adjudication, and examination authority's grading of examinees, decisions of the members of the Control Yuan on whether to impeach or rectify, and acts, files and evidence concerning the investigation and adjudication of a criminal case that has yet to be closed. For the same reason, the Legislative Yuan should be restrained from making requests for obtaining and reviewing documents from such institutions.

Background Note by the Translator

With all of its representatives newly elected by the people of Taiwan, the Second National Assembly passed the Second Additional Articles of the Constitution in May 1992. One of the major changes made by this round of constitutional reform was the transformation of the Control Yuan from a parliamentary chamber into an ombudsman institution. In the wake of this constitutional amendment, two petitions were brought to the Taiwan Constitutional Court with the hope to clarify ambiguities such as whether, under the amended Constitution, the Legislative Yuan has the parliamentary power of inquiry that is distinct from the investigative powers of the Control Yuan. The first petition was brought by the Legislative Yuan upon the passing of an extemporaneous motion proposed by some of its members, and it argued that the transformed Control Yuan should no longer retain and exercise any parliamentary powers concerning impeachment, inquiry and oversight, and that

all such powers should be transferred to the Legislative Yuan. Led by Shui-Bian CHEN, then a legislator in the opposition, a group of seventy-three members of the Legislative Yuan from across the aisle later brought the second petition to the Court pursuant to the then newly-enacted Constitutional Court Procedure Act. The second petition urged the Court to hold that, notwithstanding the peculiar separation of the five branches of government and the continued existence of the Control Yuan as an oversight institution under the existing constitutional order, the Legislative Yuan has inherent ancillary powers to make inquiries. Based on these two petitions, the Constitutional Court issued J.Y. Interpretation No. 325 in July 1993.

While its central holding is to affirm that the Legislative Yuan is vested with a certain power of inquiry by virtue of being a parliamentary chamber, the reasoning of J.Y. Interpretation No. 325 has also had profound influence on how the parliamentary power of inquiry is conceived and institutionalized in contemporary Taiwan. It was not until 1999 that the procedures for initiating and exercising the parliamentary power of inquiry were codified into law, and the statute (the Law Governing the Legislative Yuan's Power) is essentially a codification of what the Court laid out in J.Y. Interpretation No. 325 concerning the request and review of government documents. In J.Y. Interpretation No. 585 (2004), the Court, while reaffirming the central holding of J.Y. Interpretation No. 325, took a more expansive view on what the Legislative Yuan could do with its power of inquiry. In addition to accessing information or original documents held by the relevant governmental authorities, the Court held in J.Y. Interpretation No. 585 that "if necessary and with a plenary Yuan resolution, the Legislative Yuan may take testimonies or statements from civilians or government officials that are deemed relevant to the subject matter of investigation, and may impose reasonable punishment for contempt in the form of fines." J.Y. Interpretation No. 585 also recognized executive privilege as a justifiable claim for government

authorities to withhold information and exhorted the Legislative Yuan to further institutionalize its powers of inquiry with better legislation. But the general statutory rules regarding the Legislative Yuan's power of inquiry as provided by the Law Governing the Legislative Yuan's Power have so far remained unchanged.

In September 2013, President Ying-Jeou MA sought to oust Legislative Speaker Jyn-Ping WANG by accusing him of meddling in a court case against the Democratic Progressive Party Caucus Whip Chien-Ming KER. President MA based his accusation on wiretaps that were obtained by prosecutors in the Special Investigation Division (SID) of the Supreme Prosecutors Office in conducting investigation for a different case, and the legality of such extrajudicial use of judicial wiretapping was soon in serious dispute. In November 2013, the Judiciary and Organic Laws and Statutes Committee (JOLSC) of the Legislative Yuan requested review of copies of all the documents, wiretap transcripts, and wiretap recordings that led to the September controversy and on file with the SID prosecutors under the case number 100 Te-Ta-Zi No. 61. The Supreme Prosecutors Office declined to provide the requested copies to the JOLSC, and the JOLSC subsequently held Prosecutor General Shih-Ming HUANG in contempt of parliament for evading oversight and referred him to the Control Yuan for impeachment.

Against this backdrop and with the backing of the Ministry of Justice and the Executive Yuan, the Supreme Prosecutors Office petitioned the Constitutional Court to adjudicate this inter-branch dispute as a matter of constitutional adjudication as well as unified legal interpretation. Citing J.Y. Interpretations Nos. 325 and 585, Petitioner argued that the JOLSC's review request was an unconstitutional infringement upon prosecutorial independence. Petitioner also argued that the parliamentary oversight of prosecutors should be limited to such general matters as institutional design, budgets, and laws

regarding prosecution, and that only the Control Yuan could hold a prosecutor accountable for his or her performance in an individual case after the investigation of the case is closed.

The Constitutional Court issued its decision in the case, J.Y. Interpretation No. 729, in May 2015. In an attempt to balance the interests of prosecutorial independence and parliamentary oversight, the Court in that case held that only after the prosecutorial investigation of a case is closed for good could the Legislative Yuan request to review the documents and evidence contained in the prosecutor's case file, and even then, the requested review must be for the consideration of a bill that is specific in terms of purpose and scope, germane to the exercise of the constitutional authorities of the Legislative Yuan, and not prohibited by law. In J.Y. Interpretation No. 729, the Court also noted that, if there is concern that the legislative review may compromise investigations in other cases, the prosecution may withhold the provision of the requested files until the investigations for the other cases are closed. J.Y. Interpretation No. 729 further modified J.Y. Interpretation No. 325 by making it clear that the Legislative Yuan must pass a plenary Yuan resolution not only to request review of the original documents and evidence in the prosecutor's case file, but to request review of the identical copies of such documents and evidence as well.