
J. Y. Interpretation No. 435 (August 1, 1997)*

Speech Immunity of Legislators Case

Issue

What is the scope of legislative immunity of speech conferred by the Constitution, and how is it delineated?

Holding

Article 73 of the Constitution states: “No member of the Legislative Yuan shall be held responsible outside the Yuan for opinions expressed or votes cast in the Yuan.” The purpose of the article is to preserve the power derived from the membership status in the Legislative Yuan that is granted by the people and to prevent intervention and influence by other government agencies that could obstruct the exercise of legislative functions. To ensure that a member does not feel inhibited when acting as a member, the boundaries of the immunity of speech conferred by the Constitution should be construed as liberally as possible. Accordingly, all statements, questioning, motions, voting and directly-related conduct made in sessions or committees, such as party negotiations and statements expressed in public hearings, should be protected. However, conduct beyond such extent that is irrelevant to the exercise of the member’s authority is not protected, such as the use of an intentional physical movement that is obviously beyond the proper means of expressive conduct of opinions and undermines others’ legally protected interests. Whether a member’s conduct transgresses the protective boundaries in a case should be subject to the decision of the Legislative Yuan based upon its self-disciplinary practice in maintaining

* Translation and Note by Nigel N. T. LI

congressional order. But for the purpose of maintaining social order and protecting a victim's rights, the judiciary can also exercise its authority to investigate and adjudicate such conduct if necessary.

Reasoning

[1] Article 73 of the Constitution states: "No member of the Legislative Yuan shall be held responsible outside the Yuan for opinions expressed or votes cast in the Yuan." The purpose of the article is to preserve the power derived from the membership status in the Legislative Yuan that is granted by the people, and to prevent influence by other government agencies that could obstruct the exercise of legislative functions. Under such protection, which is meant to create an environment free from fear and concerns of communication obstacles, legislative members can freely express their viewpoints, substantially speak for their constituents, and represent different ideas emerging from a dynamic society. By doing so, the rational policy-making that is essential to a system of representative democracy and the duty to oversee government operations are fulfilled. The boundaries of the immunity of speech conferred by the Constitution should be construed as liberally as possible. Accordingly, all statements, questioning, motions, voting and directly-related conduct made in sessions or committees, such as party negotiations and statements expressed in public hearings, are protected. The phrase "no responsibility outside the Yuan" immunizes a member from civil liability or criminal prosecution resulting from opinions expressed or votes cast when exercising the member's duty. Only when a member's conduct violates the Yuan's internal self-discipline rules shall the member be liable for administrative responsibility (*see* J.Y. Interpretation No. 401).

[2] Since the purpose of the Constitution in protecting members' speech and immunizing them from various types of legal liabilities is to preserve their ability to exercise their duties, conduct beyond the abovementioned extent and

irrelevant to the exercise of their duties is not protected, such as the use of an intentional physical movement that is obviously beyond the proper means of expressive conduct of opinions and that undermines others' legally protected interests. Whether a member's conduct transgresses relevant boundaries and thus should carry criminal responsibility in a case should be subject to the decision of the Legislative Yuan based upon its self-disciplinary practice in maintaining congressional order. But whenever the situation becomes grave and/or obvious, or if the victim files a complaint or private prosecution, the judiciary can also exercise its authority to investigate and judge such conduct, for the purpose of maintaining social order and protecting the victim's rights.

[3] This interpretation is made upon the petition of the Legislative Yuan letter dated May 13, 1996. Another petitioner, Wei Yao CHIEN, petitioning for interpretation of Criminal Judgment E.T. No. 5120 (TPE D. Ct., 1996) and questioning the constitutionality thereof, does not meet the requirements of Article 5, Paragraph 1, Subparagraph 2 of the Constitutional Court Procedure Act. However, it is noted here that his petition is incidentally addressed by the above interpretation and need not be separately addressed.

Background Note by the Translator

In this case, there were two Petitioners seeking an interpretation from the court to delineate the applicable procedures and the scope of legislative immunity of speech conferred by the Constitution: the Legislative Yuan and a Legislative Yuan member who was convicted in court for criminal battery and assault against government officials during a committee meeting session in the Legislative Yuan. The Constitutional Court did not support the legislator's view that it is entirely up to the Legislative Yuan to decide the scope of legislative immunity of speech and to determine whether a legislator's speech or conduct is an indictable offence. Instead, the Court in its interpretation delineates the scope of legislative

immunity and draws a line between protected and unprotected expressive conducts in the context of legislative immunity of speech.