

J. Y. Interpretation No.461 (July 24, 1998) *

ISSUE: (1) Article 3, Paragraph 3, Subparagraph 1, of the 1997 Amendment to the Constitution provides that the legislators may interpellate the Premier and the heads of ministries and other agencies under the Executive Yuan while the Legislative Yuan is in session. Does the term "heads" provided in the said Subparagraph include the Chief of the General Staff?

(2) Does the Chief of the General Staff as the chief staff member for the Ministry of Defense have a duty to be present upon being invited by the Committee of the Legislative Yuan?

RELEVANT LAWS:

Articles 53, 54, 56, 62, 63 and 67 of the Constitution (憲法第五十三條、第五十四條、第五十六條、第六十二條、第六十三條、第六十七條) ; Article 3, Paragraphs 1 and 2 of the Amendment to the Constitution (憲法增修條文第三條第一項、第二項) ; Article 9 of the Organic Act of General Staff Headquarters of Ministry of National Defense (國防部參謀本部組織法第九條) .

KEYWORDS:

interpellation (質詢) , the Chief of the General Staff (參謀總長) , national security (國家安全) , separation of powers (權力分立) , constitutional practice (憲政慣例) .**

* Translated by Pijan Wu.

** Contents within frame, not part of the original text, are added for reference purpose only.

HOLDING: Article 3, Paragraph 3, Subparagraph 1, of the Amendment to the Constitution, promulgated on July 21, 1997, provides that the Executive Yuan has the duty to present to the Legislative Yuan a statement on its administrative policies and a report on its administration, while the Legislators may interpellate, during the sessions, the Premier and the heads of ministries and other agencies under the Executive Yuan. This is an institutional design in the Constitution based on the principles of democracy and accountability. Since the Ministry of National Defense is in charge of affairs concerning national defense, the Legislators may interpellate the Premier and the Minister of National Defense on the policy statements and administrative reports involving the issues of national defense. The Chief of the General Staff, who is the chief staff member for, and reports directly to, the Minister of National Defense in the administrative system, is not a head of ministry under the Constitution. Therefore, the above provision does not apply.

解釋文：中華民國八十六年七月二十一日公布施行之憲法增修條文第三條第二項第一款規定行政院有向立法院提出施政方針及施政報告之責，立法委員在開會時，有向行政院院長及行政院各部會首長質詢之權，此為憲法基於民意政治及責任政治之原理所為制度性之設計。國防部主管全國國防事務，立法委員就行政院提出施政方針及施政報告關於國防事務方面，自得向行政院院長及國防部部長質詢之。至參謀總長在行政系統為國防部部長之幕僚長，直接對國防部部長負責，自非憲法規定之部會首長，無上開條文之適用。

The Legislative Yuan is the highest legislative body of the country and has the power to decide by resolution upon statutory and budgetary bills as well as other important matters of the State. In order to exercise the above power conferred by the Constitution, the Legislative Yuan may, in accordance with Article 67 of the Constitution, set up various committees in which government officials and private parties concerned are invited to be present and answer questions. Since the Executive Yuan is accountable to the Legislative Yuan under the Constitution, the heads of ministries and the subordinates thereof, except for those who are mandated by law to exercise their functions independently and are free from external check, are under the obligation to be present and give answers when invited by those various committees according to Article 67, Paragraph 2, of the Constitution. The Chief of the General Staff, as the chief staff member for the Minister of National Defense, is in charge of important affairs concerning national defense, including the compilation and execution of budg-

立法院為國家最高立法機關，有議決法律、預算等議案及國家重要事項之權。立法院為行使憲法所賦予上開職權，得依憲法第六十七條規定，設各種委員會，邀請政府人員及社會上有關係人員到會備詢。鑑諸行政院應依憲法規定對立法院負責，故凡行政院各部會首長及其所屬公務員，除依法獨立行使職權，不受外部干涉之人員外，於立法院各種委員會依憲法第六十七條第二項規定邀請到會備詢時，有應邀說明之義務。參謀總長為國防部部長之幕僚長，負責國防之重要事項，包括預算之擬編及執行，與立法院之權限密切相關，自屬憲法第六十七條第二項所指政府人員，除非因執行關係國家安全之軍事業務而有正當理由外，不得拒絕應邀到會備詢，惟詢問內容涉及重要國防機密事項者，免予答覆。至司法、考試、監察三院院長，本於五院間相互尊重之立場，並依循憲政慣例，得不受邀請備詢。三院所屬非獨立行使職權而負行政職務之人員，於其提出之法律案及有關預算案涉及之事項，亦有上開憲法規定之適用。

ets. Such powers and duties are closely related to the jurisdiction of the Legislative Yuan. Accordingly, the Chief of the General Staff is a government official under Article 67, Paragraph 2, of the Constitution, who may not reject the invitation to be present at the committee meetings unless there is a justifiable reason that relates to the execution of military activities concerning national security. Nevertheless, the Chief of the General Staff does not have to answer questions involving important national defense intelligence. As for the presidents of the Judicial, Examination and Control Yuans, they do not have to accept invitations to be present and answer questions based on mutual respect and constitutional convention. However, the personnel of the Judicial, Examination and Control Yuans who have administrative duties and are not mandated to exercise their functions independently shall also be subject to the above constitutional rule with respect to the statutory or budgetary bills proposed by their Yuans.

REASONING: As provided in

解釋理由書：憲法第五十四條

Article 54 of the Constitution, the Executive Yuan shall have a Premier, a Vice Premier, a certain number of Ministers and heads of other agencies, and a certain number of Ministers without Portfolio. Also, in accordance with Article 3, Paragraph 1, of the Amendment to the Constitution promulgated on July 21, 1997, the Premier shall be appointed by the President of the Republic of China. On the other hand, Article 56 of the Constitution remains unchanged, which provides that the Vice Premier, Ministers, heads of other agencies and Ministers without Portfolio shall be appointed by the President upon the Premier's recommendation. Furthermore, in accordance with Article 3, Paragraph 2, Subparagraph 1, of the Amendment to the Constitution, promulgated on July 21, 1997, the Executive Yuan has the duty to present to the Legislative Yuan a statement on its administrative policies and a report on its administration. While the Legislative Yuan is in session, the Legislators may interpellate the Premier, the Ministers and the heads of other agencies under the Executive Yuan. This is an insti-

規定行政院設院長、副院長各一人，各部會首長若干人，及不管部會之政務委員若干人。又依八十六年七月二十一日公布施行之憲法增修條文第三條第一項規定，行政院院長由總統任命之。憲法第五十六條規定行政院副院長、各部會首長及不管部會之政務委員，由行政院院長提請總統任命之，則未修正。其次，行政院有向立法院提出施政方針及施政報告之責。立法委員在開會時，有向行政院院長及行政院各部會首長質詢之權，為憲法增修條文第三條第二項第一款所明定。此係憲法基於民意政治及責任政治原理所為之制度性設計。國防部為行政院所屬部會之一，主管全國國防事務，立法委員就行政院提出施政方針及施政報告關於國防事務方面，自得向行政院院長及國防部部長質詢之。至參謀總長在行政系統為國防部部長之幕僚長，國防部參謀本部組織法第九條定有明文。就其執掌事項直接對國防部部長負責，自非憲法增修條文第三條第二項第一款所稱之部會首長。立法委員即無從依該規定，於立法院會議時對於參謀總長行使質詢權。

tutional design in the Constitution based on the principles of democracy and accountability. Since the Ministry of National Defense is a ministry under the Executive Yuan and is in charge of affairs concerning national defense, the Legislators may interpellate the Premier and the Minister of National Defense on the policy statements and administrative reports involving the issues of national defense. The Chief of the General Staff, as stipulated in Article 9 of the Organic Act of General Staff Headquarters of Ministry of National Defense, is the chief staff member for, and reports directly to, the Minister of National Defense in the administrative system, but is not a Minister or agency head as referred to in Article 3, Paragraph 2, Subparagraph 1, of the Amendment to the Constitution. Therefore, the Legislators may not exercise the power to interpellate the Chief of the General Staff during the sessions in accordance with the above provision.

The Legislative Yuan, consisting of Legislators elected from among and by the people, is the highest legislative body

立法院為國家最高立法機關，由人民選舉之立法委員組織之，代表人民行使立法權，有議決法律案、預算案、

of the State and represents the people in exercising legislative power. As separately provided in Article 62 and Article 63, the Legislative Yuan has the power to decide by resolution upon statutory and budgetary bills, and motions concerning martial law, amnesty, declaration of war, conclusion of peace or treaties, as well as other important matters of the State. In accordance with Article 53 of the Constitution, the Executive Yuan is the highest administrative organ of the State. Article 3, Paragraph 2, Subparagraph 1, of the Amendment to the Constitution, promulgated on July 21, 1997, provides that the Executive Yuan shall be accountable to the Legislative Yuan. The Legislative Yuan may, pursuant to Article 67 of the Constitution, which remains unchanged after the Amendment to the Constitution, set up various committees in which the government officials and private parties concerned are invited to be present and answer questions. Therefore, even though the Constitution has been amended many times, it is still based on the principles of democracy and accountability. The principle of separation and

戒嚴案、大赦案、宣戰案、媾和案、條約案及國家其他重要事項之權，憲法第六十二條及六十三條分別定有明文。依憲法第五十三條規定，行政院為國家最高行政機關，憲法增修條文第三條第二項並規定，行政院應對立法院負責。憲法第六十七條又規定：「立法院得設各種委員會。」「各種委員會得邀請政府人員及社會上有關係人員到會備詢。」憲法增修條文就此未加修改。是憲法雖迭經增修，其本於民意政治及責任政治之原理並無變更；而憲法所設計之權力分立、平等相維之原則復仍維持不變。立法院為行使憲法所賦予前述職權，其所設之各種委員會自得邀請政府人員及社會上有關係人員到會備詢，藉其答覆時所說明之事實，或發表之意見而明瞭相關議案涉及之事項。抑有進者，立法委員對於不明瞭之事項，尚得經院會或委員會之決議，要求有關機關就議案涉及之事項，提供參考資料。受要求之機關，非依法律規定或其他正當理由，不得拒絕，業經本院釋字第三二五號解釋有案。立法委員於詢問以前，或不知有相關參考資料，須待詢問而後知之；於有關機關提供參考資料以後，倘對其內容發生疑義，須待進一步詢問，以期澄清者，其邀請到會之政府人員，尤不得

equality of powers remains unchanged, too. In order to exercise the above power conferred by the Constitution, the Legislative Yuan may invite government officials and private parties concerned to be present and answer questions in the various committees by which the Legislators may understand the matters involved in the bills or motions through the statement of facts made or the opinions expressed in the answers. Furthermore, as stated in J. Y. Interpretation No. 325, the Legislative Yuan may request the related agencies to provide reference materials in respect of the matters involved in the bills or motions that need to be clarified through resolutions of the plenary meetings or the committee meetings; the requested agency may not reject without a legal basis or other justifiable reasons. [The rationale is that] Legislators may not learn there are relevant reference materials unless and until they conduct the interpellation; moreover, if the Legislators have questions regarding the contents of the reference materials provided by the related agencies, they may further interpellate for the purpose of clarifica-

置之不理。又因我國憲法上中央政制，與一般內閣制有別，立法委員既不得兼任官吏，則負責事前起草或事後執行法案之政府人員，於議案審議過程中參與備詢，自有其必要。故立法院各種委員會依憲法第六十七條第二項規定，邀請政府人員到會備詢時，行政院各部會首長及其所屬人員，除依法獨立行使職權，不受外部干涉之檢察官、公平交易委員會委員等人員外，於立法院各種委員會依憲法第六十七條第二項規定邀請到會備詢時，有應邀說明之義務。參謀總長為行政院所屬國防部部長之幕僚長，其統御、指揮之參謀本部及陸、海、空、勤等各軍種總部，並非獨立於行政系統以外之組織。參謀總長雖非增修條文第三條第一項第一款所稱之行政院各部會首長，乃屬憲法第六十七條第二項規定之政府人員，要無疑義。參謀總長負責國防之重要職責，包括預算之擬編及執行，均與立法院之權限密切相關，立法院所設各種委員會就與參謀總長職務相關之事項，邀請其列席備詢，除有正當理由外，不得拒絕應邀到會備詢。惟詢問之內容涉及重要國防機密事項者，則免予答覆。至司法、考試、監察三院既得就其所掌有關事項，向立法院提出法律案；各該機關之預算案並應

tion. In such case, the invited government officials may not turn down the request. In addition, since the central government system under the Constitution is different from the common parliamentary system and the Legislators shall not concurrently hold a government post, it is necessary for the government officials in charge of initiating or executing the bills to participate in the legislative process by answering questions. Consequently, the heads of ministries and their subordinates are under the obligation to be present and answer questions when requested by the various committees of the Legislative Yuan, as provided by Article 67, Paragraph 2, of the Constitution, with the exception of those who discharge their duties independently and are free from external check, such as prosecutors and Commissioners of the Fair Trade Commission. The Chief of the General Staff is the chief staff member for the Minister of National Defense under the Executive Yuan. The headquarters of the General Staff, Army, Navy and Air Force under his/her command are not agencies outside of the adminis-

經立法院審查，則其所屬非獨立行使職權而負行政職務之人員，於其提出之法律案及有關預算案涉及之事項，亦有依上開憲法規定，應邀說明之必要。惟司法、考試、監察三院院長，固得依憲法第七十一條規定列席立法院會議陳述意見，若立法院所設各種委員會依憲法第六十七條第二項規定邀請政府人員到會備詢，本於五院間相互尊重之立場，並依循憲政慣例，得不受邀請列席備詢。三院所屬獨立行使職權，不受任何干涉之人員，例如法官、考試委員及監察委員亦同。

trative system. Therefore, there is no doubt that although he/she is not a Minister or an agency head under Article 3, Paragraph 2, Subparagraph 1, of the Amendment to the Constitution, promulgated on July 21, 1997, he/she is a government official as provided in Article 67, Paragraph 2, of the Constitution. In charge of important affairs concerning national defense, including the compilation and execution of budgets, the Chief of the General Staff has powers and duties that are closely related to the jurisdiction of the Legislative Yuan. The Chief of the General Staff may not reject the invitations by the various committees of the Legislative Yuan to be present at the committee meetings unless there is a justifiable reason that relates to the execution of military activities concerning national security. Nevertheless, the Chief of the General Staff does not have to answer questions involving important national defense intelligence. With respect to the Judicial, Examination and Control Yuans, since they may present bills of act, for matters within their jurisdictions, to the Legislative Yuan, which also re-

views their budgetary bills, the subordinates of these Yuans who have administrative duties and are not mandated to exercise their functions independently shall also be subject to the above constitutional rule, i.e., they have to be present and answer questions, when the statutory or budgetary bills proposed by their Yuans are concerned. Nevertheless, while the presidents of the Judicial, Examination and the Control Yuans may be present in the plenary meeting of the Legislative Yuan and give opinions pursuant to Article 71 of the Constitution, they are not required to be present and answer questions in response to the request by the committees of the Legislative Yuan according to Article 67, Paragraph 2, i.e., requests for government officials to be present and answer questions. This is based on the mutual respect between the five Yuans and the constitutional convention. This exemption also applies to the personnel of the Judicial, Examination and Control Yuans who independently exercise functions and are free from external check, such as judges and Members of the Examination and Control Yuans.

Justice Young-Mou Lin filed dissenting
opinion in part.

本號解釋林大法官永謀提出部分
不同意見書。