

J. Y. Interpretation No.261 (June 21, 1990) *

ISSUE: Should the first-term representatives of the three national legislative bodies be allowed to exercise their powers indefinitely without periodical re-election?

RELEVANT LAWS:

Articles 26, 28, 64, 65, 91 and 93 of the Constitution (憲法第二十六條、二十八條、第六十四條、第六十五條、第九十一條及第九十三條) ; Paragraph 6 of the Temporary Provisions Effective During the Period of National Mobilization for the Suppression of the Communist Rebellion (動員戡亂時期臨時條款第六項) ; J.Y. Interpretation No. 31 (司法院釋字第三一號解釋) .

KEYWORDS:

National representatives (中央民意代表) , national legislative bodies (中央民意機構) , periodical re-election (定期改選) , representatives at large (全國性中央民意代表) .**

HOLDING: The terms of office of the national representatives are expressly provided in the Constitution. Since the first-term national representatives were elected and took office, our nation

解釋文：中央民意代表之任期制度為憲法所明定，第一屆中央民意代表當選就任後，國家遭遇重大變故，因未能改選而繼續行使職權，乃為維繫憲政體制所必要。惟民意代表之定期改

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has suffered severe calamities. As a result, reelection of the national representatives has been infeasible and all of the first-term national representatives have continued to exercise their powers. Such results were necessary for the maintenance of our constitutional system. However, periodical reelection of representatives is crucial for reflection of the will of the people and for implementation of constitutional democracy. Neither J.Y. Interpretation No. 31, nor Article 28, Paragraph 2, of the Constitution, nor Paragraph 6, Subparagraphs 2 and 3, of the Temporary Provisions Effective During the Period of National Mobilization for the Suppression of the Communist Rebellion were intended to allow the first-term national representatives to continue exercising their powers indefinitely. None of these provisions were intended to change their terms of office. Nor did they prohibit the election of the next-term national representatives from being held. In fact, since 1969, the Central Government has been holding regular elections of the national representatives in the Free Area, in order to reinforce our national representative bodies

選，為反映民意，貫徹民主憲政之途徑，而本院釋字第三十一號解釋、憲法第二十八條第二項及動員戡亂時期臨時條款第六項第二款、第三款，既無使第一屆中央民意代表無限期繼續行使職權或變更其任期之意，亦未限制次屆中央民意代表之選舉。事實上，自中華民國五十八年以來，中央政府已在自由地區辦理中央民意代表之選舉，逐步充實中央民意機構。為適應當前情勢，第一屆未定期改選之中央民意代表除事實上已不能行使職權或經常不行使職權者，應即查明解職外，其餘應於中華民國八十年十二月三十一日以前終止行使職權，並由中央政府依憲法之精神、本解釋之意旨及有關法規，適時辦理全國性之次屆中央民意代表選舉，以確保憲政體制之運作。

incrementally. To cope with the present situations, those first-term national representatives who have not been reelected on a periodical basis shall cease the exercise of their powers no later than December 31, 1991. Among them, those who have been de facto incapable of exercising or constantly failed to exercise their powers shall be immediately dismissed, after thorough investigation, from their offices. The Central Government is further mandated to hold, in due course, a nationwide second-term election of the national representatives, in accordance with the spirit of the Constitution, the essence of this Interpretation and the relevant regulations, so that the constitutional system will function properly.

REASONING: When the Legislative Yuan exercised its budgetary powers, it cast doubt on the constitutional application of J.Y. Interpretation No. 31; Article 28, Paragraph 2, of the Constitution; and Paragraph 6, Subparagraphs 2 and 3, of the Temporary Provisions Effective During the Period of National Mobilization for the Suppression of the Com-

解釋理由書：本件立法院行使審查預算之職權時，對於本院釋字第三十一號解釋、憲法第二十八條第二項及動員戡亂時期臨時條款第六項第二款、第三款之規定，發生適用憲法之疑義，聲請解釋，依本院大法官會議第一一八次會議決議及司法院大法官會議法第四條第一項第一款規定，應予受理，合先說明。

munist Rebellion. It therefore petitioned for interpretation. In accordance with the resolution of the 118th Meeting of the Council of Grand Justices of the Judicial Yuan and Article 4, Paragraph 1, Sub-paragraph 1, of the Act of the Constitutional Interpretation Procedure of the Judicial Yuan, this petition is admitted.

The Constitution provides specific terms of office for all national representatives: six years for the National Assembly Delegates, three years for the Legislators and six years for the Members of the Control Yuan, respectively. Such terms are expressly provided for in Article 28, Paragraph 1, and Articles 65 and 93 of the Constitution. After the current Constitution took effect, our nation suffered severe calamities. Upon expiration of the first term of the Legislators and Members of the Control Yuan, it was de facto impossible to hold elections of the second-term representatives in accordance with the laws. In order to prevent the Five-Yuan system as established by the Constitution from being weakened, J.Y. Interpretation No. 31 therefore declared that “before the

中華民國憲法就中央民意代表，設有任期制度。國民大會代表為六年，立法委員為三年，監察委員為六年，此觀憲法第二十八條第一項、第六十五條及第九十三條之規定甚明。行憲後，國家發生重大變故，第一屆立法委員、監察委員任期屆滿後，事實上不能依法辦理次屆選舉，為免憲法所樹立之五院制度陷於停頓，本院釋字第三十一號解釋，乃有「在第二屆委員未能依法選出集會與召集以前，自應仍由第一屆立法委員、監察委員繼續行使其職權」之釋示。至於第一屆國民大會代表，則因憲法第二十八條第二項有「每屆國民大會代表之任期，至次屆國民大會代表開會之日為止」之規定，於任期屆滿後，仍繼續行使職權。迨中華民國六十一年三月二十三日修訂動員戡亂時期臨時條款時，復有第六項第二款及第三款「第一

second-term representatives are elected and convene in accordance with the laws, all of the first-term representatives of both the Legislative and Control Yuans shall continue to exercise their respective powers.” As to the first-term National Assembly Delegates, they were allowed to keep exercising their powers after their first term expired, because Article 28, Paragraph 2, of the Constitution provides that “The term of office of the Delegates to each National Assembly term shall cease on the date upon which the next National Assembly term convenes.” Furthermore, on March 23, 1972, the Temporary Provisions Effective During the Period of National Mobilization for the Suppression of the Communist Rebellion were amended to include the following provisions: “The first-term national representatives were elected by the people of the entire nation and have been exercising their powers pursuant to the laws. Those elected through the by-elections shall have the same status” (Paragraph 6, Subparagraph 2) and “Those national representatives elected through the elections for additional members, together with the first-

屆中央民意代表，係經全國人民選舉所產生，依法行使職權，其增選補選者亦同」、「增加名額選出之中央民意代表，與第一屆中央民意代表，依法行使職權」之規定。

term national representatives, shall exercise their powers pursuant to the laws” (Paragraph 6, Subparagraph 3).

However, periodical election of representatives is an essential avenue for reflection of the will of the people and implementation of constitutional democracy. That the abovementioned national representatives were allowed to continue the exercise of their powers was necessary in order to deal with the then-existing situations and maintain the constitutional system. Since publication of the abovementioned Interpretation on January 29, 1954, the first-term national representatives have been exercising their powers for more than three decades. Nevertheless, the above-mentioned Interpretation was not intended to permit the indefinite exercise of powers by the first-term Legislators and Members of the Control Yuan, or to change their respective terms. Furthermore, Article 28, Paragraph 1, of the Constitution expressly provides “The National Assembly Delegates shall be elected every six years.” Obviously, the intention of Paragraph 2 of this Article is to avoid

惟民意代表之定期改選，為反映民意，貫徹民主憲政之途徑。前述中央民意代表之繼續行使職權，係因應當時情勢，維繫憲政體制所必要。自中華民國四十三年一月二十九日上開解釋公布以來，第一屆中央民意代表繼續行使職權已達三十餘年。但該解釋並無使第一屆立法委員、監察委員得無限期繼續行使職權或變更其任期之意，而憲法第二十八條第一項已明定：「國民大會代表每六年改選一次」，其第二項之規定顯係為避免政權機關職權之行使因改選而中輟，並非謂國民大會代表得無限期延長任期。

any time gap between elections in the course of the National Assembly's exercise of their powers. It is not intended to extend the term of office of the National Assembly Delegates indefinitely.

Furthermore, the abovementioned provisions regarding the first-term national representatives' exercise of powers pursuant to the laws as provided for in Paragraph 6, Subparagraphs 2 and 3, of the Temporary Provisions Effective During the Period of National Mobilization for the Suppression of the Communist Rebellion were amended for those national representatives elected through both the by-elections and elections for additional members. In the spirit of the abovementioned J.Y. Interpretation No. 31, the intention of these two Subparagraphs was not to permit the indefinite exercise of powers by those national representatives who were not reelected periodically. Nor did they prohibit the government from holding the next-term elections of the national representatives. In fact, since 1969, the Central Government has been holding regular elections of the

上開動員戡亂時期臨時條款第六項第二款及第三款關於第一屆中央民意代表依法行使職權之規定，係因增選補選及增加名額中央民意代表之選出而增列，與前開解釋意旨相同，既非謂未定期改選之中央民意代表得無限期行使職權，亦未限制辦理次屆中央民意代表之選舉。事實上，自中華民國五十八年以來，中央政府已在自由地區辦理中央民意代表之選舉，逐步充實中央民意機構。為適應當前情勢，第一屆未定期改選之中央民意代表除事實上已不能行使職權或經常不行使職權者，應即查明解職外，其餘應於中華民國八十年十二月三十一日以前終止行使職權。

national representatives in the Free Area, in order to reinforce the national legislative bodies incrementally. To cope with the present situation, those first-term national representatives who have not been reelected on a periodical basis shall cease the exercise of their powers no later than December 31, 1991. Among them, those who have been de facto incapable of exercising or constantly failed to exercise their powers shall be immediately dismissed, after thorough investigation, from their offices.

As stated above, those national representatives who have not been reelected on a regular basis shall cease the exercise of their powers. However, those provisions regarding election of the national representatives as provided for in Articles 26, 64 and 91 of the Constitution are still not entirely applicable in practice at the present time. Given such circumstances, the Central Government shall make an appropriate plan, in accordance with the spirit of the Constitution, the essence of this Interpretation and the relevant regulations, to hold in due course the next elec-

未定期改選之中央民意代表既須終止行使職權，而憲法第二十六條、第六十四條及第九十一條關於中央民意代表選舉之規定，目前事實上仍不能完全適用，中央政府自應依憲法之精神、本解釋之意旨及有關法規，妥為規劃，在自由地區適時辦理含有全國不分區名額之次屆中央民意代表選舉，以確保憲政體制之運作。至現有增加名額選出之中央民意代表其職權之行使，仍至任期屆滿時為止，併此說明。

tion of the national representatives, including a certain number of representatives-at-large, so that the constitutional system will continue to function. It should be noted here that those current national representatives elected through the elections for additional members shall continue to exercise their powers until the end of their term.

Justice Chih-Peng Lee filed dissenting opinion.

本號解釋李大法官志鵬提出不同意見書。