

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

**ISSUE:** Article 15 of the Amendment to the Constitution provides that from the second term thereafter the Members of the Control Yuan should be nominated by the President and confirmed by the National Assembly. Shall the Control Yuan continue to be characterized as a part of the congress? If not, shall its investigative power be transferred to the Legislative Yuan?

**RELEVANT LAWS:**

Articles 57, Subparagraph 1, 67, Paragraph 2, 80, 88, 95 and 96 of the Constitution ( 憲法第五十七條第一款、第六十七條第二項、第八十條、八十八條、九十五條及九十六條 ) ; Article 15 of the Amendment to the Constitution ( 憲法增修條文第十五條 ) ; J. Y. Interpretations No. 13 and 76 ( 司法院釋字第十三號及第七十六號解釋 ) .

**KEYWORDS:**

central representative authorities ( 中央民意機關 ) , democratic country ( 民主國家 ) , congress ( 國會 ) , impeachment power ( 彈劾權 ) , investigation power ( 調查權 ) .\*\*

**HOLDING:** Interpretation No. 76 of the Judicial Yuan states that the Control Yuan together with other central

**解釋文：**本院釋字第七十六號解釋認監察院與其他中央民意機構共同相當於民主國家之國會，於憲法增修條

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\* Translated by David T. Liou.

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

representative authorities are deemed equivalent to the congress of a democratic country. Such interpretation is no longer applicable to the Control Yuan since, after the implementation of Article 15 of the Amendment to the Constitution, the Control Yuan is not considered a central representative authority; moreover, its position and power have been changed as a result thereof. However, the Five-Yuan system under the Constitution has not been changed. The Amendment does not make changes to the impeachment power, censure power, rectification power, etc., which originally fell within the powers of the Control Yuan, and the investigative power accorded by Articles 95 and 96 of the Constitution for the exercise of the said powers. As such, this power of investigation shall nevertheless be exercised by the Control Yuan exclusively. In order to exercise the many powers granted by the Constitution, in addition to proceeding in accordance with Article 57, Subparagraph 1, and Article 67, Paragraph 2, of the Constitution, the Legislative Yuan may, after resolution by the general meeting or a committee meeting of the Legislative

文第十五條規定施行後，監察院已非中央民意機構，其地位及職權亦有所變更，上開解釋自不再適用於監察院。惟憲法之五院體制並未改變，原屬於監察院職權中之彈劾、糾舉、糾正權及為行使此等職權，依憲法第九十五條、第九十六條具有之調查權，憲法增修條文亦未修改，此項調查權仍應專由監察院行使。立法院為行使憲法所賦予之職權，除依憲法第五十七條第一款及第六十七條第二項辦理外，得經院會或委員會之決議，要求有關機關就議案涉及事項提供參考資料，必要時並得經院會決議調閱文件原本，受要求之機關非依法律規定或其他正當理由不得拒絕。但國家機關獨立行使職權受憲法之保障者，如司法機關審理案件所表示之法律見解、考試機關對於應考人成績之評定、監察委員為糾彈或糾正與否之判斷，以及訴訟案件在裁判確定前就偵查、審判所為之處置及其卷證等，監察院對之行使調查權，本受有限制，基於同一理由，立法院之調閱文件，亦同受限制。

Yuan, request the relevant authorities to provide reference materials for issues involved in the subject matter. Where necessary, the Legislative Yuan may request for review of the original documents after resolution by the general meeting or committee meeting of the Legislative Yuan, and the authority being so requested may not decline such request unless in accordance with the laws or for other justifiable reasons. However, where the independent exercise of powers by the government authorities is protected by the Constitution, for example, legal opinions enumerated by the judicial authorities when adjudicating cases, performance evaluation of examinees by the examination authorities, determination by the members of the Control Yuan on whether to impeach or rectify, and the dealings of investigation and adjudication in litigation cases prior to the final and binding judgments as well as the files and evidence thereof, the exercise of investigative power by the Control Yuan with respect thereto is subject to constraints from the outset. Based on the same reason, the request for document review by the Legisla-

tive Yuan is subject to the same constraint.

**REASONING:** The Constitution of our country does not provide for the notion of “Congress”. There was a quandary as to which government authority should represent the congress where contact with other countries is required to be made in the name of the congress, and the Judicial Yuan has made an Interpretation No. 76 pursuant to a request. The Interpretation provides that “the National Assembly, the Legislative Yuan, and the Control Yuan together are deemed equivalent to the congress in a democratic country.” In addition, the basic reasoning for such interpretation is based on the fact that all of the above are comprised of the members or representatives directly/indirectly elected by the general public, and that, as far as their positions and the nature of their authorities under the Constitution are concerned, they shall be deemed as the equivalent of congress in democratic countries. Since the Constitution perceives that the members of the Control Yuan are indirectly elected by the people,

**解釋理由書：**我國憲法並無國會之名稱，前以國際聯繫有須用國會名義者，究應由何機關代表國會發生疑義，本院依聲請作成之釋字第七十六號解釋，亦祇謂「國民大會、立法院、監察院共同相當於民主國家之國會」，並以其均由人民直接間接選舉之代表或委員所組成，就憲法上之地位及職權性質而言，應認為相當於民主國家之國會，作為解釋之基本理由。茲憲法關於監察委員由人民間接選舉產生，對司法院、考試院之人事同意權以及因中央民意代表身分所享有之言論免責權等規定，因憲法增修條文第十五條之規定而停止適用。基於上述憲法增修條文之規定，監察院第二屆監察委員係由總統提名經國民大會同意後任命，已非中央民意機構，其地位及職權亦有所變更，上開解釋自不再適用於監察院。

the provisions regarding approval power with respect to the personnel of the Judicial Yuan and Examination Yuan, and legislative immunity accorded by virtue of having the identity as the central people's representatives are no longer applicable by reason of Article 15 of the Amendment to the Constitution. Based on the above amended provision in the Amendment, the second-term members of the Control Yuan are commissioned after the approval by the National Assembly following nomination by the President. As such it is not a central representative authority and its position and powers are also altered. Consequently, the above Interpretation shall no longer be applicable to the Control Yuan.

In addition to the National Assembly, the Constitution has established five yuans to be in charge of the executive, legislative, judicial, examination, and control powers, all of which are the highest authorities of the country, and their respective powers are mainly delineated by the Constitution. This is not entirely similar to the separation-of-powers system

憲法於國民大會之外，設立五院分掌行政、立法、司法、考試、監察五權，均為國家最高機關，彼此職權，並經憲法予以劃分，與外國三權分立制度，本不完全相同，其中何者相當於民主國家之國會，於五院職權之劃分並無必然之關連，憲法增修條文既未對五院體制有所改變，亦未增加立法院之職權，則監察院對於中央及地方公務人員

adopted in other countries. The question as to which entity is the equivalent of a “congress” in a democratic country is not necessarily intrinsically related to the delineating of powers amongst the five yuans. The amended provision in the Amendment has not made changes to the five-yuan system, nor has it enlarged the powers of the Legislative Yuan. Since no amendment is made to the censure and impeachment powers exercisable by the Control Yuan where it considers the central or local public servants negligent or in breach of law, the power of rectification which is confined to the Executive Yuan and its relevant divisions and the investigative power granted by Articles 95 and 96 of the Constitution for the exercise of the said power, such power should nevertheless be exercised exclusively by the Control Yuan.

In order for the Legislative Yuan to maximize its functions, Article 57, Sub-paragraph 1, of the Constitution states that “The Executive Yuan has the duty to present to the Legislative Yuan a statement of its administrative policies and a report

認為有失職或違法情事，得提出之糾舉、彈劾及限於對行政院及其有關部會得提出之糾正，以及為行使此等職權，依憲法第九十五條、第九十六條具有之調查權，既未修改，自仍應專由監察院行使。

為使立法院發揮其功能，憲法於第五十七條第一款規定，「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」，於第六十七條第二項規定，「各種委員會得邀請

on its administration. The legislators have the right to interpellate the premier of the Executive Yuan and the ministers of the divisions thereof whilst the meeting is in session.” Article 67, Paragraph 2, provides that “the various committees may invite government officials and interested parties to attend the meeting and to answer questions.” As such the legislators can be questioned or can raise questions at the meetings and acquire an understanding of the relevant matters from the explanations or opinions proffered by the persons being so questioned or the attendees in response to the subject matter in question. Where something is still not clear, they can, through resolution by the general meeting or committee meeting of Legislative Yuan, request the relevant authorities to provide reference materials with respect to issues involved in the subject matter under discussion. Where necessary, the Legislative Yuan may request for review of the original documents so as to comply with the constitutional provisions with respect to the exercise of powers by the legislators in meetings. The authority being so requested may not decline such

政府人員及社會上有關係人員到會備詢」，則立法委員本得於開會時為質詢或詢問，經由受質詢人或應邀列席人員就詢問事項於答覆時所說明之事實或發表之意見，而明瞭有關事項。如仍不明瞭，得經院會或委員會之決議，要求有關機關就議案涉及事項提供參考資料，必要時並得經院會決議調閱文件原本，以符憲法關於立法委員集會行使職權之規定，受要求之機關非依法律規定或其他正當理由不得拒絕。但國家機關獨立行使職權受憲法之保障者，例如法官依據法律獨立審判，不受任何干涉，考試委員、監察委員獨立行使職權，憲法第八十條、第八十八條、憲法增修條文第十五條第六項均有明文保障；而檢察官之偵查與法官之刑事審判，同為國家刑罰權正確行使之重要程序，兩者具有密切關係，除受檢察一體之拘束外，其對外獨立行使職權，亦應同受保障。本院釋字第十三號解釋並認實任檢察官之保障，除轉調外，與實任推事（法官）同，可供參證。上述人員之職權，既應獨立行使，自必須在免於外力干涉下獨立判斷。故如司法機關審理案件所表示之法律見解、考試機關對於應考人成績之評定、監察委員為糾彈或糾正與否之判斷，以及訴訟案件在裁判確定前就偵

request unless in accordance with the laws or for other justifiable reasons. However, the independent exercise of powers by the government authorities is protected by the Constitution, for example, independent adjudication by a judge in accordance with the laws and free from any interference, and the independent exercise of powers by the members of the Examination Yuan and Control Yuan are all clearly prescribed in Articles 80 and 88 of the Constitution and Article 15, Paragraph 6, of the Amendment. The prosecutor's investigation and the judge's criminal trial are both important procedures for the proper exercise of the country's punishment powers, and the two are closely linked. Except for the constraint of "the consistency of prosecution," the independent exercise of powers with respect to others shall similarly be subject to protection. Interpretation No. 13 of the Judicial Yuan provides some reference that the protection afforded to the current prosecutor shall be the same as that of the judge except in matters concerning transfer. Since the powers of the abovementioned persons shall be exercised independently,

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independent judgment shall be arrived at whilst free from external interference. Hence, with respect to legal opinions enumerated by the judicial authorities when adjudicating cases, performance evaluation of examinees by the examination authorities, determination by the members of Control Yuan on whether to impeach or rectify, and the dealings of investigation and adjudication in litigation cases prior to the final and binding judgment as well as the files and evidence thereof, the exercise of investigative power by the Control Yuan is subject to constraints from the outset. Based on the same reason, the request for document review by the Legislative Yuan is subject to the same constraint.