

J. Y. Interpretation No.342 (April 8, 1994) *

ISSUE: Have the Organic Act of the National Security Council, National Security Bureau and Bureau of Personnel Administration of the Executive Yuan been passed by the resolution of the Legislature? Are the disputes subject to the judicial review of this Yuan?

RELEVANT LAWS:

Articles 37, 62, 63, 72, 73 of the Constitution (憲法第三十七條、第六十二條、第六十三條、第七十二條、第七十三條) ; Article 13, Paragraph 2, of the Constitutional Interpretation Procedure Act (司法院大法官審理案件法第十三條第二項) ; Article 9 of the Amendments to the Constitution (憲法增修條文第九條) ; Articles 12, 13 of the Standard Act for the Laws and Rules (中央法規標準法第十二條、第十三條) .

KEYWORDS:

parliamentary autonomy (國會自治) . **

HOLDING: When reviewing bills of act, the Legislative Yuan shall proceed with the review in accordance with the self-enacted rules of assembly

解釋文：立法院審議法律案，須在不牴觸憲法之範圍內，依其自行訂定之議事規範為之。法律案經立法院移送總統公布者，曾否踐行其議事應遵循

* Translated by David T. Liou.

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

whilst remaining within the scope of the Constitution. The issue of whether the review of the bills of act that are submitted by the Legislative Yuan to the President for promulgation follows the review procedures shall not be subject to scrutiny by the authority responsible for interpretation of the Constitution unless it is in clear contravention to the Constitution since it is an internal matter which falls within the scope set by the Legislative Yuan by virtue of the principle of parliamentary autonomy. Therefore, where the President, pursuant to Article 72 of the Constitution, promulgates laws submitted by the Legislative Yuan, despite deviation from the rules of the Legislative Yuan, if it already exists in formality, it shall be effective in accordance with Article 13 of the Standard Act for the Laws and Rules. Where the procedures for enactment of the laws can be determined to be in contravention to the Constitution without investigation into the facts, i.e., where there are palpable material defects which are against the fundamental rules of enactment of laws, the authority responsible for constitutional interpretation may still de-

之程序，除明顯牴觸憲法者外，乃其內部事項，屬於議會依自律原則應自行認定之範圍，並非釋憲機關審查之對象。是以總統依憲法第七十二條規定，因立法院移送而公布之法律，縱有與其議事規範不符之情形，然在形式上既已存在，仍應依中央法規標準法第十三條之規定，發生效力。法律案之立法程序有不待調查事實即可認定為牴觸憲法，亦即有違反法律成立基本規定之明顯重大瑕疵者，則釋憲機關仍得宣告其為無效。惟其瑕疵是否已達足以影響法律成立之重大程度，如尚有爭議，並有待調查者，即非明顯，依現行體制，釋憲機關對於此種事實之調查受有限制，仍應依議會自律原則，謀求解決。關於依憲法增修條文第九條授權設置之國家安全會議、國家安全局及行政院人事行政局之組織法律，立法院於中華民國八十二年十二月三十日移送總統公布施行，其通過各該法律之議事錄，雖未經確定，但尚不涉及憲法關於法律成立之基本規定。除此之外，其曾否經議決通過，因尚有爭議，非經調查，無從確認。依前開意旨，仍應由立法院自行認定，並於相當期間內議決補救之。若議決之結果與已公布之法律有異時，仍應更依憲法第七十二條之規定，移送總統公布施

clare it void. Where there is a dispute as to whether the defect is sufficient to affect the enactment of the laws to a grave extent and investigation is required, i.e., where it is not evident and, according to the current regime, the investigation of the facts thereof by the authority responsible for constitutional interpretation is subject to constraints, then the dispute shall be resolved in accordance with the autonomy rule of the Legislative Yuan. With respect to Article 9 of the Amendment to the Constitution which authorizes the establishment of the organizations of the National Security Council, National Security Bureau and Bureau of Personnel Administration of the Executive Yuan, the Legislative Yuan has submitted it to the President for promulgation on December 30, 1993. Although the protocols to the laws passed have not yet been affirmed, they do not involve the fundamental rules of enactment of laws under the Constitution. In addition, whether the protocols have been resolved is controversial and cannot be confirmed without investigation. In accordance with the aforesaid principles, it shall be determined by the Legislative

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Yuan and shall be remedied within an appropriate period. If the resolution is at variance with the promulgated laws, then it shall be resubmitted to the President for promulgation pursuant to Article 72 of the Constitution.

REASONING: In accordance with the general rules of constitutionally democratic countries, the legislative authority of a country rests with the state council. The procedures through which the legislative authority is exercised by the state council can be prescribed in accordance with the self-stipulated rules of assembly so long as they are within the realm of the Constitution. The implementation of the rules of assembly is an internal matter for the state council. Pursuant to the principle of separation of powers, the executive, the judiciary or other state authorities should give respect thereto and this is what is jurisprudentially called self-regulation or parliamentary autonomy of the state council. The rules of assembly of the state council of each country, except for the codified rules, include a variety of uncodified rules. Therefore, when apply-

解釋理由書：依民主憲政國家之通例，國家之立法權屬於國會，國會行使立法權之程序，於不牴觸憲法範圍內，得依其自行訂定之議事規範為之，議事規範如何踐行係國會內部事項。依權力分立之原則，行政、司法或其他國家機關均應予以尊重，學理上稱之為國會自律或國會自治。又各國國會之議事規範，除成文規則外，尚包括各種不成文例規，於適用之際，且得依其決議予以變通，而由作此主張之議員或其所屬政黨自行負擔政治上之責任。故國會議事規範之適用，與一般機關應依法規嚴格執行，並受監督及審查之情形，有所不同。

ing the rules, room for flexibility is necessary depending on the resolutions. The senator who makes the assertion or the party to which he/she belongs shall be politically responsible therefor. Accordingly, the applicability of the assembly rules of the state council differs from the strict execution in compliance with laws in regard to ordinary authorities and the extent to which they are subject to supervision and review.

Article 62 of the Constitution clearly specifies that the Legislative Yuan is the country's highest legislature and is comprised of legislators elected by the people and who act on behalf of the people in the exercise of legislative rights. Although the procedure for the exercise of the aforesaid authorities is not clearly stipulated in the Constitution, the review of bills of act shall follow the rules of assembly which comprise the rules of organization of the Legislative Yuan, the rules of assembly and the customs and practices of assembly. This is not at variance with the self-regulation rights enjoyed by the state council of the constitutionally democratic

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，憲法第六十二條定有明文。立法院行使職權之程序，憲法雖未詳加規定，惟其審議法律案，須依議事規範為之，而議事規範係由立法院組織法、議事規則及議事慣例等構成，與一般民主憲政國家國會所享有之自律權，並無二致。立法院於審議法律案過程中，曾否踐行其議事規範所定程序乃其內部事項，除牴觸憲法者外，屬於議會依自律原則應自行認定之範圍，並非釋憲機關審查之對象，此在各國實務上不乏可供參考之先例。美國聯邦最高法院一八九〇年裁判認為：法案經國會兩院議長署名送請總統批准並交付國務卿

countries in general. Whether the Legislative Yuan is in compliance with the procedure stipulated in its rules of assembly in its review of bills of act is an internal matter, unless it is in violation of the Constitution, and it shall fall into the scope of the parliamentary autonomy instead of the subject to be reviewed by the authority responsible for the constitutional interpretation which can be seen from the precedents in many countries' practices. The judgment of the United States Federal Supreme Court in 1890 states that bills of act which have been signed by the leaders of both houses and which have been submitted to the President for approval and delivered to the State Secretary shall be considered passed in the state council without having to refer to the meeting minutes or the relevant documents of the two houses. This is based on the principle of separation of powers in that each department is equal and there is mutual respect amongst the departments. As such, the review power of the judiciary authorities with respect to these matters shall be subject to constraints (See *Field v. Clark*, 143 US 649). A judgment of the Japan

者，即應認該法案已經國會通過，無須審酌國會兩院之議事錄及有關文件。此係基於權力分立，各部門平等，互相尊重之意旨，司法機關就此等事項之審查權應受限制（見 *Field v. Clark*, 143 U.S. 649）。日本最高裁判所一九六二年裁判認為：警察法修正案既經參眾兩院議決，並循法定程序公布，法院唯有尊重兩院之自主性，不應就上訴論旨所指有關制定該法議事程序之事實加以審理，進而判斷其有效或無效（日本最高裁判所大法庭一九六二年三月七日判決）。德國聯邦憲法法院一九七七年裁判亦認為：議會之議事規範除牴觸憲法者外，有關議事進行及紀律等事項，均屬議會自律之範圍。法律在審議過程中曾經不同黨派之議員參與協商，提付表決時又無基本爭議，則於表決時，不論出席人數如何，若未有至少五人以上議員之質疑，而經確認其無決議能力，即於決議之效力不生影響（BVerfGE44, 308ff.）。此等判例所含國會議事實務之細節，雖因各國制度有異，難期一致，然其尊重議會自律之理念，則並無不同。是以總統依憲法第七十二條規定，因立法院移送而公布之法律，縱有與其議事程序不符之情形，然在形式上既已存在，依中央法規標準法第十三條之規定，仍生效

Supreme Court in 1962 states that since the Amendment to the Police Act has been resolved by both houses and has been promulgated in accordance with the legal procedures, the court shall respect the self-regulating nature of the two houses and shall not adjudicate the facts pertaining to the stipulation of the rules of assembly which are referred to in the notion of appeal in determining the validity or invalidity thereof (Judgment of the Japan Supreme Court, March 7, 1962). The judgment of the German Federal Constitutional Court in 1977 also states that unless the rules of assembly are in violation of the Constitution, matters relating to the progress of the meeting and the discipline thereof shall fall within the domain of the self-regulation of the state council. If during the review process there is participation by members from different parties and there is no fundamental dispute at the time of the voting, and, at the time of the voting, irrespective of the number of persons in attendance, if no more than five members raise any objections thus confirming that there is no support for a resolution, then the effect of the resolution

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would not be affected (BveerfGe 44, 308ff). Although the particulars of the practical affairs of the state council contained in the above rulings differ depending on the systems of each country and are difficult to harmonize, the credence in respect to the parliamentary autonomy of the state council is the same. Therefore, the President, pursuant to Article 72 of the Constitution, shall decide that laws which have been submitted by the Legislative Yuan and promulgated thereby, despite deviation from the rules of assembly, exist in terms of formality, and shall be effective in accordance with Article 13 of the Standard Act for the Laws and Rules.

Laws shall be considered void by reason of contradiction with the Constitution. This is not confined to contradiction in substance with the Constitution. In other words, where material defects can be found in the legislative process which can be deemed in contradiction with the Constitution without investigation into the facts thereof (for example, failure to comply with the resolution procedures contained in Article 63 of the Constitution),

法律因牴觸憲法而無效，固不以其內容牴觸憲法者為限，即其立法程序有不待調查事實即可認定為牴觸憲法之重大瑕疵者（如未經憲法第六十三條之議決程序），則釋憲機關仍得宣告其為無效。然如其瑕疵是否已達足以影響法律成立之重大程度，尚有爭議，並有待於調查者，則事實尚未明顯。依司法院大法官審理案件法第十三條第二項規定，大法官解釋憲法得準用憲法法庭之規定行言詞辯論，乃指法律問題之辯

the authority responsible for the interpretation of the Constitution may declare it void. However if there is a dispute as to whether the defect is sufficient to affect the enactment of law to a great extent and investigation is required, then the facts are not yet clear. Pursuant to Article 13, Paragraph 2, of the Constitutional Interpretation Procedure Act, when interpreting the Constitution, the Grand Justices may apply *mutatis mutandis* the rules for verbal debate stipulated for the constitutional court. This refers to debate on legal issues and is different from the verbal debate involved in declaring matters which are in contradiction with the Constitution by the political party and which may require investigation for evidence thereof. This cannot be subject to the review and scrutiny by the authority responsible for constitutional interpretation. Moreover, if, for purposes of investigating facts, legislators of different stances are subpoenaed to appear in court for exposition, then undoubtedly this is a transfer of dispute over political issues to the judicial authority and is in contravention to the purpose of Article 73 of the Constitution. This shall

論，與宣告政黨違憲事件得調查證據之言詞辯論，有所不同，即非釋憲機關所能審究，且若為調查事實而傳喚立場不同之立法委員出庭陳述，無異將政治議題之爭議，移轉於司法機關，亦與憲法第七十三條之意旨有違，應依議會自律原則，仍由立法院自行認定之。關於依憲法增修條文第九條授權設置之國家安全會議、國家安全局及行政院人事行政局三機關，其組織應以法律定之。行政院提出各該機關組織之法律草案後，立法院於同條第三項所定期限屆滿前審議，並經總統於中華民國八十二年十二月三十日依立法院同日（八二）院臺議字第四〇一八、四〇一九及四〇二〇號咨文公布施行。其通過各該法律之議事錄，雖未經確定，但非議事日程上之討論事項，尚不涉及憲法關於法律成立之基本規定，亦即並非足以影響各該法律成立之重大瑕疵。至除此之外，其瑕疵是否已達重大程度，則尚有爭議，立法院當時議事情形混亂，導致議事錄迄未確定，各該法律案曾否經實質議決，自非明顯，更無公眾週知之可言。依前開說明，應由立法院於相當期間內議決補救之。若議決之結果與已公布之法律有異時，應更依憲法第七十二條之規定，移送總統公布施行。其生效日期，則得

be determined by the Legislative Yuan in accordance with the autonomy rules of the state council. With respect to Article 9 of the Amendment to the Constitution which authorizes the establishment of the three organizations of the National Security Council, National Security Bureau and Bureau of Personnel Administration of the Executive Yuan, the Constitution thereof shall be stipulated by the law. After the Executive Yuan submits the draft bills to the organization of each authority, the Legislative Yuan completes its review before the time period prescribed in Paragraph 3 of the same Article and, in the case of said law, the President promulgated it on December 30, 1993, in accordance with the submittal of (82) Yuan-Tai-Yi-Tze 4018, 4019 and 4020 of the Legislative Yuan. Although the protocols to the laws passed have not yet been affirmed, if they are not items for discussion for the meeting itinerary and do not involve the fundamental rules of enactment of laws under the Constitution, they do not constitute material defects which are sufficient to affect the enactment of the laws. In addition, there was a dispute as to whether

依中央法規標準法第十二條及第十三條之規定決定之。

the defect was extensive in its scale and the chaotic situation of the meeting at that time in the Legislative Yuan resulted in the protocols not being confirmed. As such, it is not self-evident whether the passage of each law proposal has been resolved in substance, let alone is it evident to the public. In accordance with the aforesaid elucidation, the Legislative Yuan shall remedy the situation within an appropriate period. If the resolution is at variance with the promulgated laws, then it shall be resubmitted to the President for promulgation pursuant to Article 72 of the Constitution. Its effective date shall be determined in accordance with Articles 12 and 13 of the Standard Act for the Laws and Rules.

Justice Herbert Han-Pao Ma filed concurring opinion.

Justice Chien-Hua Yang filed dissenting opinion.

本號解釋馬大法官漢寶提出協同意見書；楊大法官建華提出不同意見書。