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

Terms of Office of the First Congress Members Case

Issue

Shall the First Congress Members be allowed to exercise their powers indefinitely without being subject to periodic election?

Holding

The terms of office of members of respective congressional bodies are expressly provided in the Constitution. After the members of the First Congress were elected and took office, the nation endured serious upheavals, which militated against election of new members of Congress. In order to keep the constitutional system functioning, it was necessary that all members of the First Congress continue to exercise their powers. However, periodic election of members of Congress is a *sine qua non* to reflect the will of the people and implement constitutional democracy. Neither J.Y. Interpretation No. 31, nor Article 28, Paragraph 2 of the Constitution, nor Section¹ 6, Paragraphs 2 and 3 of the Temporary Provisions Effective During the Period of National Mobilization for Suppression of the Communist Rebellion allow the members of the First Congress to exercise powers indefinitely. None of these provisions was intended to change their terms of office or prohibit election of new members of Congress. In fact, since 1969, the Central Government has been

* Translation and Note by Nigel N. T. LI

¹ Editor's note: To be in conformity with the wording used in the original Chinese text of the Temporary Provisions Effective During the Period of National Mobilization for Suppression of the Communist Rebellion, "Section" is used as the corresponding term of "Article" in reference to the Temporary Provisions.

holding regular elections of congressional members in the Free Territory, in order to solidify the congressional bodies gradually. To address the present situation, those members of the First Congress who have not been re-elected shall cease exercising their powers no later than December 31, 1991. Those who have been proven to be incapable of exercising or to have often failed to exercise their powers as revealed by investigations shall be immediately discharged from their offices. The Central Government shall schedule, in due course, a nationwide election of the next members of Congress in compliance with the spirit of the Constitution, the essence of this Interpretation, and all relevant regulations, so that the constitutional system may function properly.

Reasoning

[1] When the Legislative Yuan exercised its budgetary power, it was unsure about the constitutional application of J.Y. Interpretation No. 31, Article 28, Paragraph 2 of the Constitution, and Section 6, Paragraphs 2 and 3 of the Temporary Provisions Effective During the Period of National Mobilization for Suppression of the Communist Rebellion (hereinafter “Temporary Provisions”). It therefore petitioned for interpretation. Pursuant to the resolution made at the 118th Formal Conference of this Court and Article 4, Paragraph 1, Subparagraph 1 of the Council of Grand Justices Procedure Act, the petition was accepted.

[2] The Constitution provides specific terms of office for members of respective congressional bodies: six years for the Delegates of the National Assembly, three years for the Members of the Legislative Yuan, and six years for the Members of the Control Yuan. Such terms are expressly provided in Article 28, Paragraph 1 and Articles 65 and 93 of the Constitution. After the Constitution took effect, the nation suffered serious upheavals. Upon expiration of the terms of the Members of the First Legislative Yuan and the Members of

the First Control Yuan, it became practically impossible to hold elections for the next congressional members in accordance with the laws. In order to prevent a shutdown of the Five-Yuan system as established by the Constitution, J.Y. Interpretation No. 31 declared, “[U]ntil new members are elected and convene in accordance with the laws, all the Members of both the First Legislative and First Control Yuans shall continue to exercise their respective powers.” As for the Delegates of the First National Assembly, they were allowed to continue exercising their powers after their terms expired because Article 28, Paragraph 2 of the Constitution states, “The term of office of the Delegates of each National Assembly shall cease on the date upon which the next National Assembly convenes.” On March 23, 1972, the Temporary Provisions were amended to include the following provisions: “The members of the First Congress were elected by the people of the entire nation and have been exercising their powers pursuant to the laws. Those elected through by-elections shall have the same status.” (Section 6, Paragraph 2) “Those members of Congress elected as Additional Members shall exercise their powers pursuant to the laws, together with the members of the First Congress.” (Section 6, Paragraph 3)

[3] However, periodic election of members of Congress is a *sine qua non* to reflect the will of the people and implement constitutional democracy. That the members of the First Congress were allowed to continue performing their duties was a necessary response to the then-existing situation and served to keep the constitutional system functioning. Since J.Y. Interpretation No. 31 of 1954, the members of the First Congress have been performing their duties for more than three decades. Nevertheless, that Interpretation was not intended to permit the Members of the First Legislative Yuan and the First Control Yuan to exercise their powers indefinitely or to change their respective terms. Article 28, Paragraph 1 of the Constitution expressly states, “The Delegates of the National Assembly shall be elected every six years.” Obviously, the true intent of

Paragraph 2 of this Article is to avoid any interruption of the congressional functions owing to the timing of the election of new delegates. It by no means was meant to extend the term of office of the Delegates of the National Assembly indefinitely.

[4] Furthermore, the above-mentioned provisions regarding the members of the First Congress' exercise of powers pursuant to the laws as provided for in Section 6, Paragraphs 2 and 3 of the Temporary Provisions were amended for those members of Congress elected through both by-elections and elections for Additional Members. In the spirit of J.Y. Interpretation No. 31, these two Paragraphs should not be read to allow the members of the First Congress to exercise powers indefinitely. Nor should they be understood to prevent the government from holding elections of new members of Congress. In fact, since 1969, the Central Government has been holding regular elections of members of Congress in the Free Territory, in order to solidify the congressional bodies gradually. To address the present situation, the members of the First Congress who have never been re-elected shall cease exercising their powers no later than December 31, 1991. Those who have been proven to be incapable of exercising or to have often failed to exercise their powers as revealed by investigations shall be immediately discharged from their offices.

[5] As stated above, the members of the First Congress who have never been re-elected shall cease exercising their powers. However, those provisions regarding election of the members of Congress in Articles 26, 64, and 91 of the Constitution are still not entirely applicable at the present time. In light of such circumstances, the Central Government shall make an appropriate plan, following the spirit of the Constitution, the essence of this Interpretation, and all relevant regulations, to hold in due course an election of new congressional members, including a certain number of representatives-at-large, so that the constitutional system may continue to function. It should be noted here that

current members of Congress elected as additional members shall continue to exercise their powers until the end of their terms.

Background Note by the Translator

The Executive Yuan, seeing that the term of the Members of the First Control Yuan would expire on June 4, 1954, pursuant to Article 93 of the Constitution; that the term of the Members of the First Legislative Yuan expired on May 7, 1951, pursuant to Article 65 of the Constitution and was extended by one year three times as a result of consultations the President had with the Legislative Yuan, would again expire on May 7, 1954; and that re-election of the Members of these two Yuans was by no means practicable, filed a petition with the Constitutional Court in January 1954, seeking constitutional interpretation as to whether the Five-Power Constitution would allow the Members of both the First Legislative Yuan and the First Control Yuan to continue exercising their constitutional powers. On January 29, 1954, the Constitutional Court decided in J.Y. Interpretation No. 31 that the Members of both the First Legislative Yuan and the First Control Yuan may continue to exercise their powers when national upheavals militate against election of new members.

Years later, the Legislative Yuan, upon exercising its power in reviewing government budgets, raised significant issues in applying the Constitution in regard to J.Y. Interpretation No. 31, Article 28 of the Constitution, and Section 6, Paragraphs 2 and 3 of the Temporary Provisions Effective During the Period of National Mobilization for Suppression of the Communist Rebellion, and filed a petition with the Constitutional Court in April 1990 for constitutional interpretation.