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## **J.Y. Interpretation No. 86 (August 15, 1960)\***

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### **Separation of the Judicial and the Prosecutorial Institutions Case**

#### **Issue**

Should the high courts and their subordinate courts be organizationally placed under the Judicial Yuan?

#### **Holding**

Article 77 of the Constitution provides that the Judicial Yuan is the highest judicial institution of the State and vested with the judicial power over civil and criminal cases. The judicial power over civil and criminal cases provided for in this Article shall refer to the power to adjudicate civil and criminal cases vested in courts of all levels. It follows that the high courts and their subordinate courts, being vested with the power to adjudicate civil and criminal cases, should be organizationally placed under the Judicial Yuan.

#### **Reasoning**

Article 77 of the Constitution provides that the Judicial Yuan is the highest judicial institution of the State and vested with the judicial power over civil and criminal cases. The judicial power over civil and criminal cases provided for in this Article shall refer to the power to adjudicate civil and criminal cases vested in courts of all levels. This is evidenced by the fact that Article 82 of the Constitution requires the organization of the Judicial Yuan and courts of all levels to be prescribed by statute, and that this Article is included as part of the Judiciary Chapter in the Constitution with the hope that the judicial

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\* Translation and Note by Nigel N. T. LI

system be integrated. It follows that the high courts and their subordinate courts, being vested with the power to adjudicate civil and criminal cases, should be organizationally placed under the Judicial Yuan. All relevant statutes and regulations shall be revised accordingly so as to be in compliance with the essence of Article 77 of the Constitution.

**Background Note** by the Translator

Pursuant to the Court Organization Act, the high courts and their subordinate courts all exercised judicial power over civil and criminal cases. However, the high courts and their subordinate courts were organizationally placed under the Ministry of Judicial Administration under the Executive Yuan. The petitioner, the Control Yuan, asserted that this was potentially in violation of Article 77 of the Constitution. Hence, it filed a petition with the Constitutional Court for constitutional interpretation.