
J.Y. Interpretation No. 530 (October 5, 2001)*

Administrative Supervision of the Supreme Judicial Institution Case

Issue

Can the Judicial Yuan as the supreme judicial institution enact trial rules or supervisory regulations of judges without proper authorization of law?

Holding

[1] Article 80 of the Constitution prescribes that judges shall be above partisanship and shall, in accordance with law, hold trials independently, free from any interference. This Article is to ensure that judges are to be bound only by laws and free from any other forms of interference, hold office without considering the outcome of their judgments, and make judgments based on their conscience and in accordance with law. Judicial independence is one of the fundamental principles regarding the separation of powers in the constitutional structure of a democracy. To realize the principle of judicial independence, the judiciary shall preserve judicial autonomy. Based on judicial autonomy, the supreme judicial institution shall retain the power of rulemaking to govern its practice and judicial matters. Furthermore, in order to guarantee the right to judicial remedy in accordance with legal proceedings and the right to fair and efficient trials, the supreme judicial institution shall have the supervisory power of judicial administration for the purpose of guaranteeing the beneficiary the right to judicial access. Both the preservation of judicial autonomy and the exercise of judicial supervisory powers shall aim at safeguarding judicial independence. As a result, while the supreme judicial institution may prescribe rules governing

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judicial practice within the scope and for the purpose of judicial administration and supervision, it shall not undermine judicial independence. Based upon judicial autonomy, the supreme judicial institution may prescribe and amend rules governing the details and technical matters of judicial procedures. Within its supervisory powers, the supreme judicial institution may lawfully provide, in addition to rules addressing judicial administrative matters, rules regarding interpretative materials within its jurisdiction, or legal opinions governing judicial practice for lower courts and judicial staff in their legal enforcement and application. However, judicial rules shall not be inconsistent with laws, and these rules shall not add any further restrictions on individuals' freedoms and substantive rights without concrete and detailed delegation from law. Furthermore, J.Y. Interpretation No. 216 rendered by this Court has made it clear that when making judgments in concrete cases, judges shall not be bound by judicial rules that are involved with legal opinions. Nor shall enforcement rules and precautionary matters prescribed by the Judicial Yuan within its supervisory power of judicial administration undermine the principle of judicial independence.

[2] With regard to prosecutors' duty to investigate criminal cases, under the principle of prosecutorial coordination, the Prosecutor General and chief prosecutors shall retain the power to issue orders regarding prosecutorial matters according to Articles 63 and 64 of the Court Organization Act. Thus, unlike judges who make judgments independently, prosecutors executing their duties in accordance with the Code of Criminal Procedure are to be placed under the authority and supervision of the Prosecutor General and chief prosecutors. As for the administrative supervision of prosecutors' offices in the courts of all levels, because Article 111, Subparagraph 1, of the Court Organization Act prescribes that the Minister of Justice shall have supervisory power over prosecutors' offices in the courts of all levels, the Minister of Justice may lawfully issue orders

concerning administrative and supervisory matters of prosecution in order to facilitate criminal policies and expedite the execution of prosecutorial matters.

[3] Article 77 of the Constitution prescribes that the Judicial Yuan shall be the supreme judicial institution in charge of civil, criminal, and administrative cases, and in cases concerning disciplinary measures against public officials. According to the current Judicial Yuan Organization Act, however, the Judicial Yuan shall have seventeen Justices in charge of constitutional interpretation and unified interpretations of statutes and regulations; Justices form a Constitutional Court to adjudicate cases concerning the dissolution of unconstitutional parties, and under the Judicial Yuan, the courts of all levels, the Administrative Court, and the Commission on the Disciplinary Sanction of Functionaries are established. Consequently, the Judicial Yuan, other than Justices with the aforesaid adjudicative powers, has become merely the highest judicial administrative organ, resulting in the separation of the highest adjudicative organ from the highest judicial administration. In order to be consistent with the intent of the framers of the Constitution that considered the Judicial Yuan as the highest judicial adjudicative organ, the Judicial Yuan Organization Act, the Court Organization Act, the Administrative Court Organization Act, and the Organization Act of Commission on the Disciplinary Sanction of Functionaries must be reviewed and revised in accordance with the designated constitutional structure within two years from the date of announcement of this Interpretation.

Reasoning

[1] Article 80 of the Constitution prescribes that judges shall be above partisanship and shall make judgments independently in accordance with laws and free from any interference, establishing the principle of judicial independence. The principle of judicial independence entails judges' independence both in making judgments and in holding office. The former means

that judges shall be bound only by laws and free from any other forms of interference; the latter entails that judges holding office shall not be affected by their judgments. Based upon this principle, Article 81 of the Constitution ensures that judges shall hold office for life, that no judges shall be removed from office unless found guilty of criminal offenses, subject to disciplinary measures, or declared to be under interdiction, and that no judges, except in accordance with laws, shall be suspended, transferred, or have their compensation diminished during their continuance in office. Judicial independence, in establishing that judges shall base their judgments on their conscience and hold trials and make judgments in accordance with laws, is one of the most important mechanisms regarding the separation of powers and checks and balances in the constitutional structure of a free democracy. To realize the principle of judicial independence, the judiciary shall preserve judicial autonomy, including the independence of judges, judicial administration, and judicial rulemaking. Among them, judicial rulemaking ensures that the supreme judicial institution shall have its adjudicative members prescribe rules governing the details or technical matters involved in the procedures of litigation or non-litigation of cases in order to ensure the litigation process is both fair and efficient and to guarantee the beneficiary the right to judicial access. Furthermore, the Constitution guarantees the right to judicial remedy, and the State shall ensure that individuals have the right to judicial remedy in accordance with legal proceedings and the right to fair and efficient trials, so the supreme judicial institution shall have the supervisory power of judicial administration. Yet, both the preservation of judicial autonomy and the exercise of judicial supervisory powers shall aim at safeguarding judicial independence. Thus, while the supreme judicial institution may prescribe rules governing judicial practice within the scope of judicial administration and supervision, it shall not violate the aforementioned principle of judicial independence. Rules concerning judicial administration and supervision

prescribed by the supreme judicial institution, in addition to rules addressing judicial administrative matters, may lawfully provide concerned laws and rules, interpretative materials within its jurisdiction, or legal opinions governing judicial practice for lower courts and judicial staff in their legal enforcement and application. Judicial rules, however, shall not be inconsistent with laws, and these rules shall not add any further restrictions on individuals' freedoms and substantive rights without concrete and detailed delegation from law. Furthermore, J.Y. Interpretation No. 216 rendered by this Court has made it clear that when making judgments in concrete cases, judges shall not be bound by judicial rules that are involved with legal opinions.

[2] To sufficiently and efficiently guarantee individuals' beneficiary right to judicial access, to the extent that it does not undermine the principle of judicial independence, the judicial administrative organ can exercise its supervisory power over judges concerning their duties. Judges shall have the responsibility to lawfully, fairly, and promptly handle cases before them. If judges violate their duties or are negligent in the execution of their duties, they shall be notified, cautioned, or even punished according to relevant laws. Such cases may be exemplified as when judges apply laws or rules that have been abrogated, or when judges leave the courtroom without due cause during hearings held by a tribunal en banc, thus resulting in the suspension of trials, or when judges prolong trial procedures, or the completion of judgments has been considerably delayed. Besides, it is necessary to exercise supervisory power when judges cannot provide reasonable explanations for the delays of the cases before them, and this supervision is consistent with the principle of judicial independence. Furthermore, it does not involve the core of trial nor is it in violation of judicial independence when the judicial administration prescribes objective standards to review and monitor judges' litigation management and job performance or to supervise judges' execution of judicial administrative matters other than handling

cases, such as their participation in judicial conferences or other courts' routine meetings.

[3] According to the current legal system, the Judicial Yuan, based upon its supervisory powers of judicial administration, has prescribed many rules regarding civil and criminal, litigation and non-litigation matters for the courts and their branches to hold trials, including the Precautionary Matters on Handling Civil Procedure, the Precautionary Matters on Handling Compulsory Enforcement, the Guidelines for Handling Civil Injunctive Procedures, the Precautionary Matters on the Courts' Handling of Civil Mediations and Small Claims Litigation (issued on August 20, 1990, and abrogated on April 8, 2000, due to the revision of the Precautionary Matters on Handling Civil Procedures), the Guidelines for Compensation Received by the Witness(es) and Expert Witness(es) for Their Services, Travel Expenses and Testimonies, the Precautionary Matters on the Courts' Application of the Act Governing Dispute Mediation of Cities, Towns and Suburban Communities, the Precautionary Matters on Courts' Handling Criminal Procedures, the Guidelines for the Courts' Handling of Defendants' Bail in Criminal Procedures, the Guidelines for the Courts' Handling of Expedited Cases in Criminal Procedure, the Guidelines for Facilitating Deadlines of Case Handling for All Courts, the Precautionary Matters on the Courts' Expedited Handling of Serious Criminal Offenses, and the Guidelines for Handling Compulsory Enforcement Regarding Properties Unregistered after Succession. These rules are consistent with the Constitution, if they are only for cautioning judges to execute duties lawfully, appropriately, and efficiently and to prevent biased decisions due to flawed deliberations, and they are not in violation of laws and do not add further restrictions to individuals' rights. In order to sustain the principle of judicial independence, whether or not these rules violate this Interpretation shall be determined in a timely manner, and the said rules shall be reviewed and revised accordingly. Concerning the

Regulations Governing Matters of Family, the Rules Governing the Courts' Handling of Attorneys' Requests for Case Files, and the Measures Governing the Compulsory Enforcement of Lands and Houses in the Taiwan Area, if they involve the restriction of individual rights and freedoms, they should certainly be based upon a concrete and detailed delegation of law and published in accordance with the procedures prescribed by Article 3 of the Central Regulation Standard Act.

[4] With regard to prosecutors' duty to investigate criminal cases, under the principle of prosecutorial coordination, the Prosecutor General and chief prosecutors shall retain the power to direct and supervise prosecutors under their authority according to Article 63 of the Court Organization Act. Article 64 of the same Act prescribes further that the Prosecutor General and chief prosecutors may handle prosecutorial matters directly or delegate them to prosecutors under their authority. When prosecutors carry out their duties in accordance with the Code of Criminal Procedure such as conducting investigations, indictments, and executions, under the principle of prosecutorial coordination, they are placed under the authority and supervision of the Prosecutor General and chief prosecutors, thus making prosecutors different from judges who independently make judgments. As for the administrative supervision of prosecutors' offices in the courts of all levels, Article 111, Subparagraph 1, of the Court Organization Act prescribes that the Minister of Justice shall have supervisory power over prosecutors' offices in the courts of all levels. According to Subparagraph 2 of the same provision, the Prosecutor General of the Prosecutors' Office in the Supreme Court shall supervise only the prosecutor's office under his/her authority, and, as to matters of administrative supervision, Articles 112 and 114 shall apply accordingly. Regarding matters of prosecutorial administration, the Minister of Justice may lawfully prescribe precautionary rules in order that criminal policies and prosecutorial matters may be carried out promptly and

efficiently. The Guidelines for the Prosecutors' Offices Handling Compensation Received by Witness(es) and Expert Witness(es) for Their Services, and Travel Expenses and Testimonies in Criminal Cases, laid down by the Ministry of Justice, are based upon the supervisory and administrative power of the Ministry of Justice and do not violate the Constitution within the scope of this Interpretation.

[5] Article 77 of the Constitution prescribes that the Judicial Yuan shall be the supreme judicial institution in charge of civil, criminal, administrative cases, and also cases concerning disciplinary measures against public officials. Yet, according to the current Judicial Yuan Organization Act, the Judicial Yuan shall have seventeen Justices in charge of constitutional interpretation and unified interpretations of statutes and regulations, and the Justices shall form a Constitutional Court to adjudicate cases concerning the dissolution of unconstitutional parties. Although Article 4 of the Judicial Yuan Organization Act promulgated on March 31, 1947, prescribed that the Judicial Yuan should have a civil, a criminal and an administrative tribunal, and a commission on the disciplinary sanction of functionaries, before going into effect, this Act was revised on December 25, 1947. This revision adhered to the previous court system of the tutelage period and established the Supreme Court, the Administrative Court, and the Commission on the Disciplinary Sanction of Functionaries under the Judicial Yuan. When the Judicial Yuan Organization Act was revised on June 29, 1980, it still prescribed that the Judicial Yuan should establish the Supreme Court, the Administrative Court, and the Commission on the Disciplinary Sanction of Functionaries. Consequently, the Judicial Yuan, other than Justices vested with the power of judicial interpretation and the adjudication of cases concerning the dissolution of unconstitutional parties, has become merely the highest judicial administrative organ, resulting in the separation of the highest adjudicative organ from the highest level of judicial

administration. In order to be consistent with the intent of the framers of the Constitution, the Judicial Yuan Organization Act, the Court Organization Act, the Administrative Court Organization Act, and the Organization Act of the Commission on the Disciplinary Sanction of Functionaries must be reviewed and revised in accordance with the designated constitutional structure within two years from the date of announcement of this Interpretation.

Background Note by the Translator

This Interpretation was requested by the Control Yuan in 1996, arguing that the Judicial Yuan's issuance of rules governing lower courts and trial practices without legal delegation violated the principle of *Gesetzesvorbehalt*, statutory preservation. However, the Constitutional Court held that the Judicial Yuan indeed had such power, but nevertheless cautioned that the separation of the highest adjudicative organ from the highest level of judicial administration as resulting from the then-current Judicial Yuan Organization Act was never intended by the constitutional framers and needed to be revised within two years from the date of announcement of the Interpretation. Nearly twenty years have since gone by, but what was demanded by this Interpretation has not yet been implemented.

It should also be noted that following this Interpretation, another interpretation, J.Y. Interpretation No. 539, also dealt with the issue of judicial independence. It concerned whether constitutional protection of judgeship should be extended to the holder of an office as a division's leading judge of lower courts. Because the duty of a leading judge is to supervise the ministerial business of a court, the Constitutional Court held that the purpose of Article 81 of the Constitution is to ensure that judges decide cases above partisanship, and thus such protection does not extend to the office of a division's leading judge.

