
J.Y. Interpretation No. 632 (August 15, 2007)*

**The Exercise of Constitutional Powers and the Duty of Loyal
Cooperation of Constitutional Organs Case**

Issue

Is it constitutional for the Legislative Yuan to not exercise its consent power over the President's nominations for the Members of the Control Yuan?

Holding

Article 7, Paragraphs 1 and 2 of the Additional Articles of the Constitution stipulate that “[t]he Control Yuan shall be the highest control body of the nation and shall exercise the powers of impeachment, censure and audit,” and that “[t]he Control Yuan shall have twenty-nine Members, including a President and a Vice-President, all of whom shall serve a term of six years. All Members shall be nominated and, with the consent of the Legislative Yuan, appointed by the President of the Republic.” As such, the Control Yuan is a constitutional organ with specific powers bestowed upon it by the Constitution. It is an integral and indispensable part of the regular operation of the constitutional system of the nation. Given that the President, Vice-President and the Members of the Control Yuan are all legal positions established by the Constitution, all constitutional organs have indispensable responsibilities to ensure the essential existence and regular operation of the Control Yuan. In order to ensure that the power of the Control Yuan can be exercised uninterruptedly, prior to the expiration of the term of the incumbent President, Vice-President and the Members of the Control Yuan, the President of the Republic shall nominate candidates to fill these positions in

* Translation by Wei-Sheng HONG, based upon the previous translation by Andy Y. SUN

a timely manner and seek the Legislative Yuan's consent. The Legislative Yuan, in turn, shall exercise such consent power in a timely manner to maintain the regular operation of the Control Yuan. A passive non-exercise of the nomination power by the President of the Republic or of the consent power by the Legislative Yuan that leads to an interruption of the exercise of the power and function of the Control Yuan is unconstitutional, as it jeopardizes the integrity of the constitutional system of the nation. The dispute that caused the present petition should be disposed of appropriately in accordance with this Interpretation.

Reasoning

[1] The terms of the President, Vice-President and Members of the Third Control Yuan expired on January 31, 2005. In accordance with Article 7, Paragraph 2 of the Additional Articles of the Constitution promulgated on April 25, 2000, the President of the Republic submitted an official message (Hua Tzong Yi Zhi No. 09310052491) to the Legislative Yuan on December 20, 2004, nominating Clement C. P. CHANG and twenty-eight other nominees to serve as the Members of the Fourth Control Yuan. Without complying with Article 29 of the Law Governing the Legislative Yuan's Power, which requires the power of consent over the Presidential Nominations of the Members of the Control Yuan to be exercised by direct review without discussion by the Committee of the Whole Yuan (Entire Members) and followed by a vote of the Members of the Legislative Yuan in the Yuan Sitzings (Plenary Meeting). Instead, the Legislative Yuan first referred these Nominations to the Procedure Committee in accordance with Article 8, Paragraph 2 of the same Law for assignment to the legislative agenda. On December 21 of that year, when deliberating over the assignment of the legislative agenda for the Sixth Session, Twelfth Meeting of the Fifth Legislative Yuan, the majority of the Procedure Committee voted to prevent the Nominations as an item from being included on the agenda. The same Committee

then voted to resolve the same on December 28 of the same year, and on January 4, 10 and 18, 2005, respectively. Thus, no deliberation over the nominations was conducted during the prior session of the Fifth Legislative Yuan. The Members of the Sixth Legislative Yuan were inaugurated on February 1, 2005, and the President of the Republic once again submitted an official message (Hua Tzong Yi Zhi No. 09400046061) requesting that the Legislative Yuan exercise its consent power over the same slate of nominees, as proposed in the first message submitted by the President. These Nominations were once again referred to the Procedure Committee. That Committee, through internal consultation, agreed that the Nominations should be “suspended from being listed as an item to be announced” and voted to resolve the same on April 12, 19 and 26 and May 3, 17 and 24, 2005, respectively. As of the date this Interpretation is being announced, the Legislative Yuan has yet to act on these Nominations.

[2] The petitioners are William Ching-Te LAI and eighty-eight other Members of the Legislative Yuan. They believe that the Procedure Committee of the Legislative Yuan has abused its procedure by inappropriately preventing the Nominations from being voted on in a Plenary Meeting, which has resulted in the operation of the Control power of the nation being paralyzed, creating a dispute between the Legislative Yuan and the Control Yuan over the exercise of their respective constitutional powers, and causing the likelihood of undermining the constitutional separation of powers as well as jeopardizing the order of constitutional democracy. They filed a petition to this Yuan in accordance with Article 5, Paragraph 1, Subparagraph 3 of the Constitutional Court Procedure Act, questioning whether the Procedure Committee has arrogated the power of the Plenary Meeting by preventing the Plenary Meeting from voting on the Nominations; whether it is the Legislative Yuan’s constitutional obligation to exercise its consent power over personnel nominations; and whether the Legislative Yuan has exceeded its self-regulatory power by not exercising its

consent power over the Nominations. Considering that Article 5, Paragraph 1, Subparagraph 3 of the Constitutional Court Procedure Act expressly stipulates that one-third or more of the Members of the Legislative Yuan may bring forth a petition for constitutional interpretation on constitutional controversies derived from the exercise of power, and the purpose of this petition is to request that this Court render an interpretation on the exercise of consent power over the Nominations of Control Yuan Members in accordance with Article 7, Paragraph 2 of the Additional Articles of the Constitution and the constitutionality of the exercise of such power being stalled by the Legislative Yuan, the petition meets the above-stated requirements and should, therefore, be accepted.

[3] The purpose of the establishment of various national organs by the Constitution is to ensure that all national organs can perform their respective and necessary constitutional functions without being interrupted for even a day due to any change of personnel. In order to avoid the essential existence and the regular operation of a national organ being affected by a temporary absence of a successor, various examples can be found around the world where either the Constitution or law clearly provide an adequate mechanism to maintain the continuation and regular operations of the government. For instance, the Constitution of the United States grants the President a temporary, recess appointment power when the Senate is not in session (Article II, Section 2 of the Constitution of the United States); in nations that adopt a Cabinet system, members of the incumbent cabinet shall carry on their duties until the new cabinet assumes its power (*see* Article 69, Paragraph 3 of the Basic Law of the Federal Republic of Germany and Article 71 of the Constitution of Japan). While our Constitution has similar provisions, for example, “[t]he term of office of the delegates to each National Assembly shall terminate on the day on which the next National Assembly convenes” (Article 28, Paragraph 2 of the Constitution, no longer active in accordance with Article 1, Paragraph 2 of the Additional Articles

of the Constitution), so that the powers and duties of National Assembly delegates can be carried on from one session to another; also, for example, “[i]n case the office of the President should become vacant, the Vice President shall succeed until the expiration of the original presidential term” (Article 49, First Sentence of the Constitution), and “[s]hould the offices of both the President and the Vice President become vacant, the Premier of the Executive Yuan shall exercise the official powers of the President and the Vice President. A new President and a new Vice President shall be elected in accordance with Paragraph 1 of this article and shall serve out each respective original term until its expiration” (Article 2, Paragraph 8 of the Additional Articles of the Constitution). Yet neither the Constitution nor any law provides an adequate mechanism to maintain the regular operations of the Control Yuan when the terms of its President, Vice-President and Members has expired and no successor can be inaugurated in a timely manner. Before the Constitution or laws can be amended to provide a clear solution to such circumstance, the regular operation of the constitutional order of the nation shall continue to rest on the constitutional organs which possess the power over personnel issues loyally carrying out their duties to deliver successors in a timely manner so as to avoid the constitutional order of the nation being affected.

[4] Article 7, Paragraphs 1 and 2 of the Additional Articles of the Constitution stipulate that “[t]he Control Yuan shall be the highest control body of the nation and shall exercise the powers of impeachment, censure and audit,” and that “[t]he Control Yuan shall have twenty-nine members, including a President and a Vice-President, all of whom shall serve a term of six years. All Members shall be nominated and, with the consent of the Legislative Yuan, appointed by the President of the Republic.” As such, the Control Yuan is a constitutional organ with specific powers bestowed upon it by the Constitution. It is an integral and indispensable part of the regular operation of the constitutional system of the

nation. Given that the President, Vice-President, and the Members of the Control Yuan are all legal positions established by the Constitution, all constitutional organs have indispensable responsibilities to ensure the essential existence and regular operation of the Control Yuan. In accordance with Article 7, Paragraph 2 of the Additional Articles of the Constitution, the President, Vice-President and Members of the Control Yuan shall be nominated and, with the consent of the Legislative Yuan, appointed by the President of the Republic. This design is based upon the consideration of separation of powers as well as checks and balances. While the President of the Republic is empowered to initiate the formation of the members of the Control Yuan, the Presidential nominations are subject to deliberation by the Legislative Yuan for checks and balances. In order to ensure that the power of the Control Yuan can be exercised uninterruptedly, prior to the expiration of the term of the incumbent President, Vice-President and Members of the Control Yuan, the President of the Republic shall nominate candidates to fill these positions in a timely manner and seek the Legislative Yuan's consent. The Legislative Yuan, in turn, shall exercise such consent power in a timely manner so as to maintain the regular operation of the Control Yuan. As long as the Legislative Yuan has actively exercised its consent power over the Presidential nominations, regardless of whether the outcome is approval or disapproval, the Legislative Yuan will have fulfilled its constitutional duty to exercise its consent power. Given that these are their respective constitutional obligations, if the disapproval of the Legislative Yuan results in an interruption of the exercise of power and the regular functioning of the Control Yuan, the President shall continue to nominate suitable candidates and submit the nominations to the Legislative Yuan for consent, and the Legislative Yuan shall also actively continue to engage in the exercise of its consent power. A passive non-exercise of the nomination power by the President of the Republic or of the consent power by the Legislative Yuan that leads to an interruption of the exercise

of power and function of the Control Yuan is unconstitutional, as it jeopardizes the integrity of the constitutional system. The dispute that caused the present petition should be disposed of appropriately in accordance with this Interpretation. Needless to say, when the terms of the incumbent President, Vice-President and Members of the Control Yuan have expired before their successors can be inaugurated, the Legislators may also expressly provide an adequate mechanism by legislation so as to maintain the regular operation of the Control Yuan amidst the circumstances.

[5] With regard to the petitioners' claim that this petition involves a dispute over the exercise of the respective constitutional power between the Legislative Yuan and Control Yuan, considering that the issue does not involve a constitutional controversy derived from the exercise of power of one-third or more of the Members of the Legislative Yuan; nor does it involve an application of law that raises doubt as to its constitutionality (*see* Article 5, Paragraph 1, Subparagraph 1, Second Sentence of the Constitutional Court Procedure Act), hence, it should be specified that such part of the petition does not meet the criteria set forth in Article 5, Paragraph 1, Subparagraph 3 of the Constitutional Court Procedure Act and is therefore dismissed.

Background Note by Wei-Sheng HONG

J.Y. Interpretation No. 632 is widely considered a key interpretation on the constitutional principles of separation of powers and the duty of loyal cooperation between constitutional organs. In December 2004, soon after his inauguration for a second term and a few days following the election of the Members of the Sixth Legislative Yuan, President Shui-Bian CHEN nominated Clement C.P. CHANG and twenty-eight other nominees to serve as the Members of the Fourth Control Yuan ahead of the expiration of the terms of the President, Vice-President and Members of the Third Control Yuan. The nominations faced

strong resistance in the Legislative Yuan, where the majority was held by the coalition of the opposition Chinese Nationalist Party (Kuomintang or KMT) and the People First Party. By manipulating the legislative procedure, Members of the Legislative Yuan from the opposition parties managed to withhold the nominations in the Procedure Committee; no deliberation over the nominations was conducted during the final session of the Fifth Legislative Yuan, nor was there a vote by the Plenary Meeting on the nominations. The inauguration of the Members of the Sixth Legislative Yuan in February 2005 did not unlock the political deadlock, as the majority of the Legislative Yuan was still held by the coalition of the opposition parties. The deadlock soon developed into a constitutional controversy, given that the term of the Members of the Third Control Yuan expired in January 2005, yet no successors were able to be appointed in time. Several Members of the Sixth Legislative Yuan, mostly from the Democratic Progressive Party (DPP), brought the petition to the Constitutional Court in the hope of obtaining a clear interpretation in support of the President and the DPP as the key for resolving the political deadlock.

The Constitutional Court made it clear in J.Y. Interpretation No. 632 that whilst the Constitution conferred on constitutional organs different powers to realize the constitutional principles of separation of powers and checks and balances, those powers should not be exercised without restraint. In particular, constitutional organs that possess the power over personnel issues shall loyally carry out their constitutional powers—or, alternatively, duties—to deliver successors to another constitutional organ in a timely manner so that the regular operation of the constitutional order is not to be affected. Therefore, whilst it is accepted in a constitutional democracy that different political parties or constitutional organs may disagree with each other and may utilize their powers to confront their opposition, they shall not exercise, or refuse to exercise, their powers to the extent of a resultant deadlock interrupting the exercise of power

and function of any constitution organ, as it jeopardizes the integrity of the constitutional system.

Ironically enough, the Legislative Yuan seemed to yet again fail to fulfill its constitutional duty of loyal cooperation by not following this Interpretation of the Constitutional Court closely; it did not exercise its consent power over the nomination of the Members of the Fourth Control Yuan for nearly another year after this Interpretation was announced. The political deadlock was eventually resolved when the Legislative Yuan approved the majority of the nominees nominated by President Ying-Jeou MA, the successor to President Shui-Bian CHEN. In August 2008, twenty-five of the twenty-nine Members of the Fourth Control Yuan were finally able to take office after the vacancy has lasted two and a half years.

