
J.Y. Interpretation No. 613 (July 21, 2006)*

Legislative Authority over Executive Personnel Case

Issue

Are the provisions of Articles 4 and 16 of the Organization Act of the National Communications Commission unconstitutional?

Holding

[1] It is clearly stipulated in Article 53 of the Constitution that the Executive Yuan is the highest administrative organ of the state. Under the principle of administrative unity, the Executive Yuan must be held responsible for the overall performance of all the agencies subordinate to the said Yuan, including the National Communications Commission (hereinafter referred to as the “NCC”), and shall have the power to decide upon personnel affairs in respect of members of the NCC, because the success or failure of the NCC will hinge closely on the candidates for membership in the NCC. Under the principle of separation of powers, the Legislative Yuan, which exercises the legislative power, is not precluded from imposing certain restrictions on the Executive Yuan’s power to decide on personnel affairs in respect of members of the NCC for purposes of checks and balances. However, there are still some limits on such checks and balances. For instance, there should be no violation of an unambiguous constitutional provision, nor should there be any substantial deprivation of the power to decide on personnel affairs nor a direct takeover of such power. Article 4, Paragraph 2 of the Organization Act of the National Communications Commission (hereinafter referred to as the “NCC Organization Act”) provides

* Translation and Note by Chung-Hsi Vincent KUAN

that candidates for membership in the NCC “shall first be recommended by people from all walks of life to the various political parties (groups) which, in turn, shall recommend a total of fifteen members based on the percentages of the numbers of seats of the respective parties (groups) in the Legislative Yuan, who, together with the three members to be recommended by the Premier, shall be reviewed by the Nomination Review Committee (hereinafter referred to as the “NRC”), and that the various political parties (groups) shall complete their recommendations within fifteen days as from the date of the promulgation hereof.” Paragraph 3 thereof further provides that “the NRC shall consist of a total of eleven scholars and experts as recommended by the various political parties (groups) based on the percentages of the numbers of seats of the respective parties (groups) in the Legislative Yuan within ten days as from the date of the promulgation hereof, that the NRC shall, within twenty days upon receipt of the recommended list, complete the review, which shall be conducted by means of public hearings and put to vote in the form of open balloting, and that the NRC shall first vote for approval of the candidates by more than three-fifths of its total members and, if the total number of candidates so approved does not reach thirteen, candidates to fill the vacancies shall subsequently be approved by more than one-half of its total members.” And Paragraph 4 thereof provides, “[t]he recommendations referred to in the two preceding paragraphs shall be deemed as waived if not made by the respective political parties (groups) before the applicable deadlines.” The foregoing provisions deal with the procedure for the selection of members, whereas Paragraph 6 of said Article provides for the nomination of new members to succeed outgoing members upon expiration of their term and the nomination of same in case of any vacancy, which reads as follows: “Three months before the expiration of the term for members of the NCC, members for the new term shall be nominated in accordance with the procedure set forth in Paragraphs 2 and 3 hereof; if vacancies reach more than

half of the total number of members, such vacancies shall be filled in accordance with the procedure set forth in Paragraphs 2 and 3 hereof, and the term of the succeeding members shall last till the expiration of the original term.” The foregoing provisions nearly deprive the Executive Yuan of substantially all of its power to decide on personnel affairs, which transgresses the limits on the checks and balances exercisable by the legislature on the Executive Yuan’s power to decide on personnel affairs, thus violating the principles of politics of accountability and separation of powers. In addition, the aforesaid provisions have, in essence, transferred the Executive Yuan’s power to decide on personnel affairs to the various political parties (groups) of the Legislative Yuan and the NRC, which is composed of members recommended by such political parties (groups) based on the percentages of the numbers of their seats in the Legislative Yuan, thus affecting the impartiality and reliability of the NCC in the eyes of the people, who believe that it should function above politics. As such, the purpose of establishing the NCC as an independent agency is defeated, and the constitutional intent of safeguarding the freedom of communications is not complied with. Therefore, the foregoing provisions shall become void no later than December 31, 2008. Prior to the voidance of the aforesaid provisions due to their unconstitutionality as declared by this Court, the legality of any and all acts performed by the NCC will remain unaffected, as will the transfer of personnel and affairs.

[2] As for the second sentence of Article 4, Paragraph 3 of the NCC Organization Act regarding the appointment of members of the NCC by the Premier, as well as Paragraph 5 thereof, which provides that “this Commission shall be convened on its own initiative three days after the appointment of its members, who shall elect the Chairperson and Vice-Chairperson from among themselves, and the Premier shall appoint the same within seven days upon their election, that the Chairperson and Vice-Chairperson shall be candidates who

were recommended by different political parties (groups), and that the members recommended by the Premier shall be deemed as having been recommended by the ruling party,” no violation of Article 56 of the Constitution is found in respect of such provisions.

[3] Article 16, Paragraph 1 of the NCC Organization Act provides, “During the period from the date of implementation of the Basic Act for Communications till the day when this Commission is established, in respect of any and all decisions made by the original authorities in charge of the applicable laws and regulations regarding communications on the matters listed below, the aggrieved party, whether a corporation or an individual, may file an application to this Commission for review within three months upon its establishment except for those cases for which procedures for administrative remedies have already been brought: (i) Policies regarding the supervision and management of communications; (ii) The supervision and management of, and license approval, issuance and replacement for, communications enterprises, as well as the suspension of broadcasting, license approval, issuance and replacement for, or invalidation of license for, television enterprises; (iii) The review of the qualifications for broadcasting and television enterprises, as well as their responsible persons and managers; (iv) The review and examination of communications systems and equipment; and (v) The approval of establishment of broadcasting and television enterprises, as well as the annulment of such approval; modification of the power of electric waves; suspension of broadcasting or invalidation of license; share transfer; approval of the change of name or responsible person.” The said provision is designed by the lawmakers to serve as a special relief system in respect of a special matter based on such policy considerations as the reform of the legal system, and it does not go beyond constitutional limits. Furthermore, when the NCC accepts an application for review, it is unclear whether it should revoke the original administrative act, since

no specific criteria are found in the NCC Organization Act. Therefore, the proviso of Article 117 of the Administrative Procedure Act shall still govern. Paragraph 2 of the aforesaid article provides, “Where rehabilitation is required by the decision made upon review, the government shall so rehabilitate forthwith; where rehabilitation is not practicable, compensation shall be given.” The said provision is a complementary design made by the legislators with a view to operating in coordination with the aforesaid special relief system after they considered factors such as the preservation of the stability of the law and the principle of reliance protection, which also falls within the constitutionally permissible scope.

[4] Additionally, though the Petitioner has petitioned this Court for a preliminary injunction before an interpretation for the case at issue is made, it is no longer necessary to examine the issue now that an interpretation has been rendered for the case at issue.

Reasoning

[1] 1. A petition for the interpretation of the Constitution has been filed by the Petitioner, i.e., the Executive Yuan, since the Petitioner, in exercising its functions and duties, has doubt as to the constitutionality of Article 4 of the NCC Organization Act concerning the organization of the NCC and the procedures by which members are appointed, as well as Article 16 thereof. Furthermore, it also has doubt as to the application of constitutional provisions while exercising its functions and duties in applying Articles 53 and 56 of the Constitution. Additionally, it has disputes with the Legislative Yuan concerning the application of a constitutional provision over the issue of whether the latter has the authority to pass any enactment regarding the Executive Yuan’s power to decide on personnel affairs in respect of an agency subordinate to it, thus substantially depriving the Premier of his or her nomination power. We are of the opinion that

this matter should be heard since it is consistent with the provisions of Article 5, Paragraph 1, Subparagraph 1 of the Constitutional Court Procedure Act.

[2] 2. The purposes of the administration shall be to implement the law, handle public affairs, shape social policy, pursue well-being for all, and realize national goals. Due to the complexity and diversity of these missions, various departments must be established so as to implement different tasks individually and separately based on different areas of specialization. However, the diversified offices and positions were not established so that each department could do things in its own way. Rather, the overall focus is on the division of labor. The administration must consider things from all perspectives. No matter how the labor is to be divided, it is up to the highest administrative head to devise an overall plan and to direct and supervise so as to boost efficiency and enable the state to work effectively as a whole. The foregoing is the essence of the principle of administrative unity. Article 53 of the Constitution clearly provides that the Executive Yuan shall be the highest administrative organ of the state. The intent of the article is to maintain administrative unity, thus enabling all of the state's administrative affairs, except as otherwise provided for by the Constitution, to be incorporated into a hierarchical administrative system where the Executive Yuan is situated at the top, and to be ultimately subject to the direction and supervision of the highest-standing organ, the Executive Yuan, via hierarchical control. Democracy consists essentially in politics of accountability. A modern rule-of-law nation, in organizing its government and implementing its governmental affairs, should be accountable to its people either directly or indirectly. According to Article 3, Paragraph 2 of the Additional Articles of the Constitution, the Executive Yuan shall be responsible to the Legislative Yuan, which is an institutional design under our constitution based on the doctrine of political accountability. Therefore, the principle of administrative unity as revealed by Article 53 of the Constitution is also intended to hold the Premier responsible for all the administrative affairs

under the direction and supervision of the Executive Yuan, thus making into a reality the constitutional requirement that the Executive Yuan answers to the people via the Legislative Yuan.

[3] Accordingly, when the Legislative Yuan establishes an independent agency through legislation, separating a particular class of administrative affairs from the tasks originally entrusted to the Executive Yuan, removing it from the hierarchical administrative system and transferring it to an independent agency so as to enable the agency to exercise its functions and duties independently and autonomously pursuant to law, the administrative unity and the politics of accountability will inevitably be diminished. Nevertheless, the primary purpose of recognizing the existence of an independent agency is merely to preclude the direction and supervision of the superior agency over the decisions made in respect of particular cases through the administrative hierarchy to the extent prescribed by law, thus maintaining the independent agency's freedom from political interference and giving it more autonomy to make independent decisions based on its expertise. Under our constitutional framework, where the Executive Yuan is the highest administrative organ of the state, certain power to decide on personnel affairs in respect of important positions for an independent agency should still be reserved for the Premier even if the independent agency is accorded independence and autonomy, in order that the Premier may be responsible for the overall performance of all the agencies subordinate to the said Yuan, including the independent agency, by means of entrusting the exercise of the independent agency's authorities to important personnel of such agency, thus realizing the concepts of administrative unity and political accountability. If the commissioners of an independent agency need not step down along with the Premier due to a guaranteed term of office, there is no violation of the politics of accountability despite the fact that the Premier has no method of re-appointing the commissioners of the independent agency. Besides, pursuant to the

provisions of Article 4, Paragraph 2 of the Public Functionaries Discipline Act, the Premier may still *ex officio* suspend the office of a commissioner of an independent agency in case of any major breach of law or dereliction of duty by the commissioner. Since the Premier may still exercise the power to supervise personnel affairs to the least degree, his accountability to the Legislative Yuan can nonetheless be maintained. However, since the existence of an independent agency will diminish administrative unity and politics of accountability, its establishment should be an exception. The constitutionality of establishing an independent agency will be upheld only if the purpose of its establishment is indeed to pursue constitutional public interests, if the particularity of the mission justifies the necessity of its establishment, if important matters are determined by means of hearings, if the performance of the execution of its mission is made transparent and public for purpose of public supervision, and if, owing to the vested authority of the Legislative Yuan to supervise the operation of the independent agency through legislation and budget review and having considered any and all factors on the whole, a certain degree of democratic legitimacy can be sufficiently preserved to compensate for the diminished administrative unity and politics of accountability.

[4] 3. The freedom of speech as guaranteed by Article 11 of the Constitution embodies the freedom of communications, namely, the freedom to operate or utilize broadcasting, television and other communication and mass media networks to obtain information and publish speeches. Communications and mass media are the means and platforms by which public opinions are formed. In a free democracy where the constitution is honored, they should serve such public functions as supervising any and all state organs that exercise public authority, including the executive (including the President), legislative, judicial, examination and control branches, as well as supervising the political parties whose objectives are to come into power and influence national policies. In light

of the said functions of mass media, the freedom of communications not only signifies the passive prevention of infringement by the state's public authority, but also imposes on legislators the duty to actively devise various organizations, procedures and substantive norms so as to prevent information monopoly and ensure that the pluralistic views and opinions of the society can be expressed and distributed via the platforms of communications and mass media, thus creating a free forum for public discussions. Therefore, if the lawmakers intend to make the NCC, which is in charge of the supervision and management of communications, an independent agency that may exercise its functions and duties independently pursuant to the law, thus removing it from the hierarchical administrative system of command and supervision while giving it more autonomy to make independent decisions based on its expertise, it should be considered to be consistent with the constitutional intent of protecting the freedom of communications in that it is conducive to the elimination of any potential political or inappropriate interference from superior agencies and political parties, thus ensuring the expression and distribution of diversified opinions of the society and serving the purpose of public supervision.

[5] 4. The Executive Yuan, as the highest administrative organ of the state, must be held responsible for the overall performance of all the agencies subordinate to the said Yuan, including the NCC, under the principle of administrative unity, and shall have the power to decide on personnel affairs in respect of members of the NCC, because the success or failure of the NCC will hinge closely on the candidates appointed to be members of the NCC. Nevertheless, the Legislative Yuan, which exercises the legislative power, is not precluded from imposing certain restrictions on the Executive Yuan's power to decide on personnel affairs in respect of members of the NCC for purposes of checks and balances so as to prevent the Executive Yuan from arbitrarily exercising the power to appoint personnel, thus jeopardizing the independence of the NCC. The principle of

separation of powers, as a fundamental constitutional principle, signifies not only the division of powers whereby all state affairs are assigned to various state organs with proper organization, system and function so as to enable state decisions to be made more appropriately, but also suggests the checks and balances of powers whereby powers are mutually containing and restraining so as to avoid infringement upon the people's freedoms and rights due to unrestrained misuse of the powers. However, there are still some limits on the checks and balances of powers. There should be no violation of an unambiguous constitutional provision, nor should there be any encroachment upon the core areas of the powers of various constitutional organs or restriction of the exercise of powers by other constitutional organs (*see* J.Y. Interpretation No. 585) or breach of the politics of accountability (*see* J.Y. Interpretation No. 391). An example may be the deprivation of the basic personnel and budget necessary for another constitutional organ to perform its constitutionally-mandated duties, or the deprivation of the core mission of another state organ entrusted to it by the Constitution, or direct takeover of another organ's power, thus resulting in an imbalance of powers between the organs involved.

[6] The checks and balances as imposed by the legislative power on the executive power in respect of the power to decide on the personnel affairs for an independent agency, in general, are manifested in restrictions on the personnel's qualifications, which are intended to ensure the specialization of the independent agency, and also in the formulation of conditions such as a guaranteed term of office and statutory grounds for removal from office, which are designed to maintain the independence of the independent agency with a view to shielding the members of such agency from external interference and enabling them to exercise their functions and duties independently. However, in light of the fact that the mass media under the supervision of the NCC serve the function of shaping public opinions to supervise the government and political parties, the

freedom of communications necessitates strong demand for an NCC that is free of political considerations and interference. As such, if the legislative power intends to further reduce the political influence of the Executive Yuan on the composition of the NCC to promote public confidence in the NCC's fair enforcement of the law by means of setting forth a ceiling on the number of NCC members who come from the same political party, or adding a provision in respect of overlapping terms of office, or even empowering the Legislative Yuan or diversified civil associations to participate in the decision-making process with the Executive Yuan regarding the candidates for membership on the NCC, it is permissible under the freedom of communications as guaranteed by the Constitution as long as the design of the checks and balances at issue may indeed help reduce or eliminate the political influence to promote the independence of the NCC and to further build up public confidence in the NCC's freedom from considerations and influence of partisan interests and its fair enforcement of the law. As to the question of how the Legislative Yuan or other diversified civil associations will participate in the decision-making process with the Executive Yuan regarding the candidates for membership in the NCC, the legislators are free to a certain extent to formulate the rules. Yet there should be no encroachment upon the core areas of the executive power, nor any restriction of the exercise of the Executive Yuan's power.

[7] According to Article 4, Paragraphs 2 and 3 of the NCC Organization Act, however, a total of fifteen members of the NCC will be recommended based on the percentages of the numbers of seats of the respective parties (groups) in the Legislative Yuan, and, together with the three members to be recommended by the Premier, shall be reviewed by the NRC, which is composed of eleven scholars and experts as recommended by the various political parties (groups) based on the percentages of the numbers of seats of the respective parties (groups) in the Legislative Yuan, via a two-round majority review by more than three-fifths and

one-half of the total members of the NRC, respectively. And upon completion of the review, the Premier shall nominate those who appear on the list as approved by the NRC within seven days and appoint the same upon confirmation by the Legislative Yuan. Given the fact that the Premier can recommend only three out of the eighteen candidates for membership in the NCC, that he has no say in personnel affairs during the review, that he is bound by the list as approved by the NRC, which is formed according to the percentages of the numbers of seats of the respective parties (groups) in the Legislative Yuan, and that he is obligated to nominate those appearing on the said list, to send the nominations to the Legislative Yuan for the latter's confirmation, and to appoint those candidates confirmed by the Legislative Yuan as members of the NCC, it is very clear that the Executive Yuan, in fact, has mere nominal authority to nominate and appoint and substantially limited power to recommend only one-sixth of the candidates for membership of the NCC during the entire selection procedure. In essence, the Premier is deprived of virtually all of his power to decide on personnel affairs. In addition, the executive is in charge of the enforcement of the laws, and the enforcement depends on the personnel. There is no administration without personnel. Therefore, it is only natural that the executive should have the authority by law to decide on specific personnel matters, irrespective of whether such matters concern general government employees or political appointees, and such authority should be an indispensable prerequisite for the executive power of a democratic rule-of-law nation to perform its functions to the utmost extent. Accordingly, the aforesaid provisions, in substantially depriving the Executive Yuan of virtually all its power to decide on specific personnel affairs in respect of the members of the NCC, are in conflict with the constitutional principle of politics of accountability and are contrary to the principle of separation of powers, since they lead to apparent imbalance between the executive and legislative powers.

[8] 5. As for the issue of whether the provisions that empower the various political parties (groups) to recommend candidates for membership in the NCC based on the percentages of the numbers of seats of the respective parties (groups) in the Legislative Yuan and to recommend scholars and experts to form the NRC based on such percentages are unconstitutional, it depends on whether such participation provisions substantially deprive the Executive Yuan of its power to decide on personnel affairs. The aforesaid provisions have, in essence, transferred the power to decide on personnel affairs from the Executive Yuan to the various political parties (groups) of the Legislative Yuan and the NRC, which is composed of members recommended by such political parties (groups) based on the percentages of the numbers of their seats in the Legislative Yuan, and which clearly overstep the limits of participation and run counter to checks and balances by restricting the executive power to decide on personnel affairs. In addition, since the purposes of the aforesaid provisions are to reduce political clout over the exercise of the NCC's functions and duties and to further promote the public confidence in the NCC's fair enforcement of the law, it is questionable whether the means serve the said purposes. Although the lawmakers have certain legislative discretion to decide how to reduce political influence over the exercise of the NCC's authority and further build up the people's confidence in the NCC's fair enforcement of the law, the design of the system should move in the direction of diminished partisan interference and greater public confidence in the fairness of the said agency. Nevertheless, the aforesaid provisions have accomplished exactly the opposite by inviting active intervention from political parties and granting them a special status to recommend and, in essence, nominate, members of the NCC based on the percentages of the numbers of their seats, thus affecting the impartiality and reliability of the NCC in the eyes of the people, who believe that it is to function above politics. As such, the purpose of establishing the NCC as an independent agency is defeated, and the constitutional intent of

safeguarding the freedom of communications is not honored.

[9] 6. As for the provisions of Article 4, Paragraph 3 of the NCC Organization Act regarding the appointment of members of the NCC by the Premier, as well as Paragraph 5 thereof, which provides that the Chairperson and Vice-Chairperson will be elected by and from among the members before their appointment by the Premier, there is some doubt as to whether Article 56 of the Constitution is violated. Although the NCC is equivalent to a second-level organ such as a ministry or commission according to its organization, it cannot be considered as being on a par with the general ministries and commissions subordinate to the Executive Yuan which are under the hierarchical system, since it is an independent agency that exercises its functions and duties pursuant to law, and since its members, whose qualifications are limited so as to emphasize their areas of specialization, need not step down along with the Premier due to a legally prescribed term of office. Hence, one cannot jump to the conclusion that the aforesaid provisions are in violation of Article 56 of the Constitution even though the provisions that members of the NCC are appointed by the Premier and the Chairperson and Vice-Chairperson thereof are elected by and from among the members before their appointment by the Premier are distinct from Article 56 of the Constitution, which provides that the ministers and chairpersons of various commissions shall be appointed by the President of the Republic upon the recommendation of the Premier. The scope of said Article 56 does not extend so far as to cover an independent agency. Additionally, as long as the Executive Yuan is not substantially deprived of its power to decide on personnel affairs in respect of members of the NCC, there is no violation of the principles of separation of powers and politics of accountability even if the Chairperson and Vice-Chairperson are elected by and from among the members themselves. Furthermore, as the NCC is an independent agency which, in nature, differs from general ministries and commissions, it goes without saying that Article 56 of the

Constitution, which provides that the Vice Premier, Ministers and Chairpersons of various Commissions and Ministers without Portfolio shall be appointed by the President of the Republic upon the recommendation of the Premier, will remain unaffected by the fact that the Legislative Yuan or other diversified civil associations are allowed to participate in the selection of members of the NCC.

[10] 7. Article 16, Paragraph 1 of the NCC Organization Act provides, “During the period from the date of implementation of the Basic Act for Communications until the day when this Commission is established, in respect of any and all decisions made by the original authorities in charge of the applicable laws and regulations regarding communications on the matters listed below, the aggrieved party, whether a corporation or an individual, may file an application to this Commission for review within three months upon its establishment except for those cases for which procedures for administrative remedies have already been brought: (i) Policies regarding the supervision and management of communications; (ii) The supervision and management of, and license approval, issuance and replacement for, communications enterprises, as well as the suspension of broadcasting, license approval, issuance and replacement for, or invalidation of license for, television enterprises; (iii) The review of the qualifications for broadcasting and television enterprises, as well as their responsible persons and managers; (iv) The review and examination of communications systems and equipment; and (v) The approval of establishment of broadcasting and television enterprises, as well as the annulment of such approval; modification of the power of electric waves; suspension of broadcasting or invalidation of license; share transfer; approval of the change of name or responsible person.” The foregoing provision entitles those who were subjected to unfavorable administrative decisions but failed to initiate the procedures for administrative remedies to file an application to the NCC for review within three months upon its establishment. In granting those who were

subjected to unfavorable administrative decisions the right to file an appeal after the lapse of the period for filing an administrative appeal, the provision should be considered as a special form of relief, which does not necessarily preserve the stability of the law but nonetheless falls within the constitutionally-permissible scope. Article 16 of the Constitution guarantees the people's right to lodge complaints. The specific contents thereof, as well as whether there will be adequate protection, will depend on the active formulation and institution by the lawmakers, who thus shall have broad discretion in respect of the system of administrative appeals. Except where the legislators fail to actively set forth the requirements for filing an administrative appeal or fail to provide the people with minimal due process protection, this Court will show its utmost deference to the legislative discretion of the lawmakers.

[11] It should be noted that, if the person subject to an administrative disposition failed to file for administrative relief or filed an administrative appeal only after the lapse of the statutory period, the original agency that made the administrative disposition or its superior agency, having considered relevant factors such as public and private interests, may *ex officio* withdraw the original disposition, and also that the person subject to an administrative disposition may in addition apply to the administrative agency for withdrawal, abolishment or modification of the original disposition. Article 80 of the Administrative Appeal Act, as well as Articles 117 and 128 of the Administrative Procedure Act, are examples of such provisions set forth based on the aforesaid intention. According to Article 128 of the Administrative Procedure Act, the person subject to an administrative disposition may apply to the administrative agency for withdrawal, abolishment or modification of the original disposition only if the following conditions are met: (1) (a) Where the facts on which an administrative disposition with continuous force was based have subsequently changed to the advantage of the person subject to the disposition or the person affected thereby; or (b) Where new

facts have occurred or fresh evidence has been discovered provided that, upon consideration, a more advantageous disposition is available [for the person subject to the disposition or the person affected thereby]; or (c) Where there are other causes similar to those set forth in the Administrative Court Procedure Act for retrial, which are sufficient to affect the administrative disposition; (2) The person subject to the disposition or the person affected thereby did not fail to make a statement regarding any of the abovementioned causes during the administrative procedure or the remedial proceeding out of his or her gross negligence (*see* Paragraph 1 of said Article); and (3) An application under the preceding paragraph shall be filed within three months after the lapse of the statutory period of remedy. If the cause occurs or is known thereafter, the period shall begin from the time it occurs or is known; provided, however, that no application may be made within five years after the lapse of the statutory period of remedy (*see* Paragraph 2 of said Article). The aforementioned Article 16, Paragraph 1 of the NCC Organization Act, when compared with the clauses above, does not set forth similar conditions, but rather allows a person subject to unfavorable disposition who has failed to resort to administrative remedies to apply to the NCC within a certain period for a new decision on the same matter. Despite the fact that more opportunities for administrative relief are available for such persons when compared with other people subject to unfavorable dispositions, no constitutionally-defined limits have been exceeded, since the lawmakers have intended to design a special relief system in respect of a special matter based on such policy considerations as the reform of the legal system. Furthermore, where the NCC accepts an application for review, it is unclear whether it should revoke the original administrative act, since no specific criteria are found in the NCC Organization Act. Therefore, the proviso of Article 117 of the Administrative Procedure Act shall still govern. Paragraph 2 of the aforesaid article provides, “Where rehabilitation is required by the decision made upon

review, the government shall so rehabilitate forthwith; where rehabilitation is not practicable, compensation shall be given.” The said provision is a complementary design made by the legislators with a view to operating in coordination with the aforesaid special relief system after their consideration of factors such as the preservation of the stability of the law and the principle of reliance protection, which also falls within the constitutionally-permissible scope.

[12] 8. Given the above, the Premier is substantially deprived of his power to decide on personnel affairs in respect of members of the NCC based on Article 4, Paragraph 2 of the NCC Organization Act, which provides that the various political parties (groups) shall recommend members of the NCC based on the percentages of the numbers of seats of the respective parties (groups) in the Legislative Yuan, who shall be reviewed by the NRC; Paragraphs 3 and 4 thereof, which provide that the NRC shall consist of scholars and experts as recommended by the various political parties (groups) based on the percentages of the numbers of seats of the respective parties (groups) in the Legislative Yuan, who will review candidates for membership in the NCC pursuant to the procedure specified therein, and that the Premier shall nominate those who appear on the list as approved by the NRC and send said list to the Legislative Yuan for the latter’s confirmation; and Paragraph 6 thereof, which provides that, in case of expiration of term of office or vacancy for any member of the NCC, the nomination or complementary election for new members shall be conducted in accordance with the procedure set forth in Paragraphs 2 and 3 thereof. Thus, the foregoing provisions are contrary to the constitutional principles of the politics of accountability and separation of powers. Nevertheless, in light of the fact that amending the law will take some time and that, if the said provisions become null and void forthwith, the exercise of the NCC’s authority will inevitably come to a halt and thus such circumstances may not necessarily be conducive to the people’s exercise of the freedom of communications as

guaranteed by the Constitution, it is only appropriate that a reasonable period of adaptation and adjustment should be provided. The said provisions of Article 4, Paragraphs 2, 3, 4 and 6 of the NCC Organization Act shall become void no later than December 31, 2008. Prior to the voidance of the aforesaid provisions due to their unconstitutionality as declared by this Court, the legality of any and all actions taken by the NCC will remain unaffected, as will the transfer of personnel and affairs. As for Article 4, Paragraphs 3 and 5 of the NCC Organization Act, which provide that the members of the NCC shall be appointed by the Premier whereas the Chairperson and Vice-Chairperson shall be elected by and from among the members themselves before their appointment by the Premier, they are not found to be in violation of Article 56 of the Constitution. Article 16 of the NCC Organization Act provides a special relief designed by lawmakers, which is not subject to Article 128 of the Administrative Procedure Act. Besides, the NCC may merely review whether the original disposition is lawful when an application for review is filed. Thus, it is not inconsistent with the constitutional intent to protect the rights of the people.

[13] 9. Although the Petitioner has petitioned this Court for a preliminary injunction before an interpretation for the case at issue is made, it is no longer necessary to examine that issue now that an interpretation has been rendered for the case.

Background Note by the Translator

The Petitioner, i.e., the Executive Yuan, in exercising its functions and duties, had doubt as to the constitutionality of Article 4 of the NCC Organization Act, enacted and promulgated on November 9, 2005, concerning the organization of the NCC and the procedures by which members were appointed, as well as Article 16 thereof. Furthermore, it also had doubt as to the application of constitutional provisions while exercising its functions and duties in applying

Articles 53 and 56 of the Constitution. Additionally, it had disputes with the Legislative Yuan concerning the application of a constitutional provision over the issue of whether the latter maintained the authority to pass any enactment regarding the Executive Yuan's power to decide on personnel affairs in respect of an agency subordinate to it, thus substantially depriving the Premier of his or her nomination power. Hence, the matter was brought to the attention of the Constitutional Court for interpretation in accordance with Article 5, Paragraph 1, Subparagraph 1 of the Constitutional Court Procedure Act.