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**J.Y. Interpretation No. 419 (December 31, 1996)\***

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**Vice President Concurrently Assuming Office of Premier Case**

**Issue**

Is it constitutional if the Vice President concurrently assumes office of Premier? Is the Premier constitutionally required to resign once the President-elect assumes office? Is the Legislature's resolution constitutionally binding on the President when requesting that the nomination process of the Premier be expedited?

**Holding**

[1] The Constitution does not explicitly specify whether the Vice President may concurrently assume the office of Premier of the Executive Yuan. While the nature of the duties of the two offices is not apparently incompatible, the Constitution's purpose of setting two separate offices, i.e. Vice President and Premier, would not be fully served because the order of presidential succession and the rules of action for the presidency would be affected, should the office of President be vacant or the President be unable to attend to office. The situation that led to the present Interpretation should be properly attended to according to the principles mentioned above.

[2] It is a matter of courtesy, instead of a constitutional requirement, that on the occasion of the new President's inauguration, the Premier tenders a general resignation on behalf of the Cabinet to demonstrate their respect and deference to the Head of State. Accordingly, it is a political question, and thus this Court shall not review its constitutionality, that the President enjoys full discretion to

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\* Translation by Wen-Yu CHIA, based upon the previous translation by Andy Y. SUN

attend to the Premier's resignation, which is not constitutionally required.

[3] In accordance with the Constitution, the Executive Yuan is responsible to the Legislative Yuan. The Legislative Yuan does not have the authority to request the President's action or inaction by passing a resolution, unless the Constitution stipulates otherwise. Therefore, the Legislative Yuan's resolution of June 11, 1996, "requesting the President to nominate the candidate for the Premier of the Executive Yuan and to submit such nomination for the Legislative Yuan's confirmation in the most expedited fashion" exceeded the constitutional authority of the Legislative Yuan and thus shall be considered advisory and carry no constitutional binding power over the President.

## **Reasoning**

[1] This Interpretation results from four respective petitions: (1) a petition filed by Legislator Lung-Bin HAU along with eighty-one other members of the Legislative Yuan on the constitutional question of whether the Vice President may concurrently assume the office of Premier of the Executive Yuan; (2) a petition filed by Legislator Chun-Hsiung CHANG along with fifty-six other members of the Legislative Yuan regarding the question of whether the fact that Vice President Chan LIEN also serves as Premier of the Executive Yuan violates, among other provisions, Article 49 of the Constitution; (3) a petition filed by Legislator Ting-Kuo FONG along with sixty-one other members of the Legislative Yuan regarding the questions of whether a newly inaugurated President may decline the Cabinet's general resignation led by the Premier and simply retain the Premier to continue his services without the need for re-nomination and re-confirmation by the Legislative Yuan; furthermore, whether the Vice President may concurrently assume the office of Premier of the Executive Yuan; and (4) a petition filed by Legislator Ying-Chi YAO along with seventy-nine other members of the Legislative Yuan regarding the questions of

whether the Premier must resign, be re-nominated by the President and approved by the Legislative Yuan in light of presidential re-election, whether the Vice President may also assume the office of Premier of the Executive Yuan, whether the Legislative Yuan's resolution of June 11, 1996, "requesting the President to nominate the candidate for the Premier of the Executive Yuan and to submit such nomination for the Legislative Yuan's confirmation in the most expedited fashion" exceeds the constitutional authority bestowed on the Legislative Yuan, and whether such a resolution has legal binding force over the President. The Constitutional Court granted these four petitions and resolved to consolidate them into a single case for review. Be it noted that, first, in accordance with Article 13, Paragraph 1 of the Constitutional Court Procedure Act, notices were served to the legal representatives and counsels of the petitioners, as well as to the designated representative and counsels of the related agency, the Executive Yuan. Oral argument was held in the Constitutional Court on October 16 and November 1, 1996. Second, after the conclusion of the oral argument, petitioner Legislator Ying-Chi YAO moved for another oral argument on November 26. Having reviewed the information collected, the Justices of the Constitutional Court considered the materials sufficient and ruled that no further oral argument was necessary.

[2] Arguments from the first through the third petitions may be summarized as follows: (1) The political question doctrine is not applicable when answering whether the Vice President may also serve as Premier. No constitutional disputes may be resolved by the Judiciary if the present issue is constitutionally unreviewable for its political nature, *i.e.*, applying political question doctrine to this constitutional petition, since most, if not all constitutional disputes are "political" *per se*, and the Justices of the Constitutional Court have already rendered many Interpretations (*e.g.* J.Y. Interpretation Nos. 261 and 387, etc.) with political connotations. Meanwhile, the Constitutional Court has already

rendered more than ten Interpretations in respect of the constitutionality of holding more than one public office simultaneously. It would be contradictory in itself if the Justices of the Constitutional Court consider “Vice President also Serving as Premier” a case that should be dismissed by the political question doctrine. Moreover, gradually generalized from American court cases, the political question doctrine’s content is vague and criticized by scholars, which makes it inappropriate for the Court to adapt hastily. Also, since advisory constitutional interpretation is legally recognized, the Justices of the Constitutional Court are obligated to render their decision to a given question whenever the petition has met the legal requirements. (2) Thus, the question of whether the same individual assuming both the offices of Vice President and Premier is incompatible is forbidden. According to Articles 37 and 57 of the Constitution and Article 2, Paragraph 4 of the Additional Articles of the Constitution, the Constitution adopted a Parliamentary system whereby, according to constitutional theory, the President represents but does not govern the country, and the Premier should act otherwise; thus, the President is forbidden from assuming the Premier’s office simultaneously in order for the two offices to keep each other in check. The candidate for the vice presidency, according to Article 2, Paragraph 4 of the Additional Articles of the Constitution, shall register together with the presidential candidate in a given election as a running mate, and they shall be placed on the same ticket. In accordance with the same Article, Paragraph 7, should the office of the Vice President become vacant, the President is to nominate a candidate and call forth the National Assembly to elect him or her. Therefore, the Vice President is forbidden from concurrently assuming the Premier’s office if the President is also so forbidden, considering the fact that they are in close relationship, share the same vision and serve as one. The Executive Yuan, according to Article 53 of the Constitution, is the highest organ of the state’s executive branch, whereas the Premier of the Executive Yuan and

its Cabinet are responsible to the Legislative Yuan. While the Vice President by nature is to serve as a contingency to the President, the Constitution does not clearly delineate powers and duties bestowed to the President. Yet, as a counselor to the President, the Vice President has *de facto* power to carry out the President's orders on a daily basis and serve as an assistant to the President. If the Vice President also serves as the Premier, the chief of the Cabinet would become the chief of staff to the President, who would then possess the entire executive power, thereby destroying the constitutional design of the check-and-balance mechanism completely and rendering the Premier's concurring and countersignature powers meaningless. Also, serving in two offices would in fact damage public interest and trust; the required time commitment would preclude one individual from serving in multiple offices, since each carries a heavy workload. Moreover, from the perspective of administrative legal theory, in order to uphold the integrity of constitutional branches, the Vice President is responsible for serving the President even if the Vice President is not considered a subordinate of the President, and thus the Vice President should not serve as the Premier in the meantime. Moreover, in principle, no two constitutional offices may be occupied by the same individual, and exceptions must be stipulated by the Constitution (as under the U.S. Constitution where the Vice President also serves as President of the Senate, for instance.) Article 49 of the Constitution and Article 2, Paragraph 8 of the Additional Articles of the Constitution respectively provide that the Vice President shall succeed until the expiration of the original presidential term in case the office of the President is vacant; in case of both of the offices of the President and Vice President becoming vacant, the Premier is to serve as the Acting President until a new president is elected. In case the President is incapable of carrying out the duties, the Vice President is to act on behalf of the President, and in case both the President and Vice President are incapable of fulfilling their duties, the Premier is to be the Acting President. In

order to constitutionally guarantee a continuing succession of the presidency, the Vice President is set separately from the Premier as a double insurance. Were the Vice President also the Premier, it would not only reduce the number of available successors, but also create a “trinity” that an individual would simultaneously occupy three offices once the office of President were to become vacant, and those situations intrinsically jeopardize the spirit of the Constitution. Were the office not vacant but the President unable to fulfill his or her duties, the “trinity” would still inevitably take place, and it would be confusing and difficult to determine who – the Vice President or the Premier – is acting as President, and whether the three-month limit of Article 51 of the Constitution were to apply in such a situation. Also, the impeachment procedures and consequences are different for the Vice President and the Premier: the former follows Article 6, Paragraph 5 of the Additional Articles of the Constitution, while the latter follows Paragraph 3 of the same Article that is applicable to civil servants in general. Should the Vice President also serve as the Premier and commit impeachable offenses, the Control Yuan would find no applicable measure to execute its impeachment power. Conversely, as the chief executive of the government, should the Premier be sanctioned by the Control Yuan due to negligence in discharging his or her duties, or even resign or be removed from office, it is also questionable whether this Premier would still be fit for the office of Vice President. Meanwhile, since the Vice President is responsible to the National Assembly, conflicts would occur if the Vice President were to assume the office of the Premier and the National Assembly has different propositions from the Legislative Yuan, to which the Premier is responsible. Furthermore, in addition to the check and balance relationships among the three or five branches, the President and Vice President act as the Head of the State that resides above the executive, the legislative, and the judicial branches, and operate on a neutral and objective proposition to coordinate and resolve disputes between the Five Yuans

pursuant to Article 44 of the Constitution. The Vice President would not be able to coordinate and resolve disputes neutrally and objectively should the Vice President also serve as the Premier and become a party of a certain dispute. Finally, as to whether serving multiple offices concurrently is constitutionally forbidden, the answer depends exclusively on whether the nature and scope of their respective duties are compatible or involve any conflict of interest. The aforementioned situations should demonstrate that serving in both offices of the Vice President and the Premier violates the compatibility standard and thus is constitutionally forbidden. (3) No conventional constitution for the Vice President to concurrently assume the office of the Premier: to acquire the status of constitutional convention or customary constitutional rule, both repeating recurrences and *opinio juris* among the general populace in regard to a certain action are required. Although there were two instances where the Vice President concurrently served as the Premier, both occurred during the Period of National Mobilization for the Suppression of the Communist Rebellion and the Period of Martial Law and are considered extraordinary, with their constitutionality in question, and consequently fail to acquire the status of constitutional convention or customary constitutional rule. (4) The newly-inaugurated President should not retain or return the general resignation by the Premier along with the Cabinet, but must proceed with re-nomination and seek confirmation by the Legislative Yuan: Under the constitutional design of the Five-Power Division, the Premier is not subordinate to the President and *vice versa*; thus, the Premier's resignation is subject to no one's approval. The Presidential Order for the Premier's Discharge of Duties is only a *pro forma* matter instead of a substantive power; thus, after receiving the general resignation from the Premier, the newly-inaugurated President should proceed with the re-nomination of the Premier and seek confirmation by the Legislative Yuan at once. While the previous Premier was indeed confirmed by the Legislative Yuan, the person who served as Premier then

became the Vice President, which significantly changed the conditions that the Legislature previously confirmed. Consequently, the previous confirmation does not justify the extension of the previous Premier's continuing to serve until after the inauguration of the new President. In sum, by concurrently assuming the office of the Premier, the Vice President would violate the Constitution, and the Judicial Yuan should forbid this action via its Interpretation; if the concurrent occupation of multiple offices had already been established, resignation from either office would need to be rendered as of the next day after the issuance of the Interpretation; if no resignation was rendered before that date, one should be relieved from the office later assumed.

[3] Arguments from the fourth petition and the concerned organ, i.e., the Executive Yuan, may be summarized as follows: (1) The Legislative Yuan's resolution of June 11, 1996, requesting the President to re-nominate the Premier of the Executive Yuan and to submit said re-nomination in the most expedited fashion for the Legislative Yuan's confirmation, exceeded its constitutional authority and is thus not binding upon the President: the Constitution sets no limit on the length of a term of the Premier of the Executive Yuan; it only provides that the Premier is to be nominated by the President and confirmed by the Legislative Yuan. J.Y. Interpretation No. 387 determined that the Premier should resign before the first session of the newly-elected Legislators. The then incumbent Premier LIEN had tendered the general resignation on January 25, 1996, and was later nominated by the President and confirmed by the Legislative Yuan to begin his second tenure as Premier. This is in conformity with the Constitution. Hence, before the next Legislative Yuan election, the President is not required to re-nominate, nor is there any need for the Legislative Yuan to re-confirm the appointment. Furthermore, according to Article 57 of the Constitution, the Premier, instead of the President, is responsible to the Legislative Yuan, and thus the Legislative Yuan cannot supervise the President



without exceeding its authority. Also, under various provisions of the Constitution, no power is granted to the Legislative Yuan to require the President to conduct a certain act by passing a resolution. While Article 63 of the Constitution authorizes the Legislative Yuan to decide by resolution upon statutory and budgetary bills, bills on martial law, amnesty, declaration of war, conclusion of peace or treaties and other important affairs of the State, it is clear that the aforementioned resolution is non-binding, since it constitutes neither another important affair of the State nor a bill of act via the Three Readings process. (2) The question regarding the Vice President concurrently assuming the office of Premier is highly political: It is a common practice among most countries that political questions should be resolved by political branches, i.e., the executive and the parliament themselves, under the constitutional design, and it is inappropriate for the judicial branch to intervene. J.Y. Interpretation No. 328 also excludes political questions from judicial review. Nevertheless, it is the very function of the Justices of the Constitutional Court's interpretation to settle a given controversy or dispute; thus, decision on whether an Interpretation on a political question should be rendered is subject to judicial discretion, and the concerned organ defers to this decision. (3) The Constitution does not prohibit the Vice President from concurrently assuming the office of Premier, and the two offices are compatible: From the "May 5th Constitution Draft" issued by the Nationalist Government in 1936, to the Political Consultative Conference, to the Constitution-making Conference of the National Assembly, the discussions focused on the interactions between the President and the Premier, and never touched upon the proposition of the Vice President, since the Vice President is only a standby position. As far as the legislative history of the Constitution is concerned, no prohibition against the Vice President serving concurrently as the Premier was considered. On the question of whether concurrently serving multiple offices created by the Constitution or by statutes is prohibited, the

answer, generalized from relevant Interpretations rendered by the Justices of the Constitutional Court, depends mainly on whether the nature and scope of their respective duties are compatible or involve any conflict of interest. Based upon such standard, since the office of the Vice President is purely of a standby nature which does not carry any substantive, legally-discharged duties, under no circumstances is it not compatible or in conflict with the nature and duties of the Premier of the Executive Yuan. Note that the Constitution does not adopt a parliamentary system in a strict sense for the central government, and thus the Premier's bestowed countersignature power is different from that of those countries with pure parliamentary systems in which the Prime Minister countersigns with the figurehead of the state in order to promulgate a given law. The real checks-and-balances mechanism in this Constitution is designed between the Executive and Legislative Yuans, and the Vice President would not jeopardize this constitutional mechanism by assuming the office of the Premier concurrently. Moreover, according to Article 2, Paragraph 1 of the Additional Articles of the Constitution, and the Act of Election and Recall of the President and Vice President, the Vice President is elected on the same ticket with the President, not commissioned by the President, so the President also may not discharge the Vice President. The President and Vice President only campaigned "as one", but they do not share duties and functions "as one", and the relationship between the President and the Vice President is neither hierarchical nor supervisory-subordinate. The presidential immunity, guaranteed by the Constitution, does not extend to the Vice President; neither the Constitution nor statutory law, i.e., the ROC Office of the President Organization Act, mention the duties assigned to the Vice President, nor are there any regulations similar to those of an executive organ on how a deputy assists the affairs of the chief. Thus, when the Vice President assumes the office of the Premier concurrently, it does not mix the roles of "subordinate" and "balancer" together, and it does not create

a constitutionally-conflicted role as a result. With regard to the opposition's argument that allowing concurrent and simultaneous occupation will cause an overlay of functions in case the office of the President becomes vacant, or if the President becomes incapable of fulfilling the duties, this situation may be resolved when the Vice President assumes the office of the President according to Article 49 of the Constitution, with the vacancy of the Premier's office being filled by the new President's nomination of a new candidate for Premier and seeking confirmation from the Legislative Yuan; the office of the Vice President shall have another elected pursuant to Article 2, Paragraph 7 of the Additional Articles of the Constitution. The so called "Trinity" may occur before the nomination or reelection; nevertheless, the situation would be the same should both offices of the President and the Vice President be concurrently vacant, with the Premier thus acting as President for three months. Since the latter is sanctioned by the Constitution, the former, following the same logic, should not be prohibited. The aforementioned process can also resolve the situation when the President is unable to fulfill the duties and an acting President is needed. Moreover, those who oppose the Vice President serving concurrently as the Premier argue that it will cause great difficulties and obstacles for the Control Yuan in carrying out its duties in the event an impeachable offense may be committed, or that it will cause confusion of roles in the event the President should need to coordinate and settle a dispute between different Yuans according to Article 44 of the Constitution. Yet, should a motion of impeachment be launched for neglect of duties or violation of law, the subsequent procedure should be determined based on the nature of the impeachable offense, i.e., whether it relates to the duties and functions of the Vice President or the Premier; should a motion of impeachment be launched for causes irrelevant to the office's function (e.g. moral turpitude), the Control Yuan should decide upon an applicable procedure without difficulties and obstacles. With regard to the issue

under Article 44 of the Constitution, the coordination power is designated to the President as a neutral agent; when the office of the President is fully functioning, the Vice President does not have the constitutional power to settle disputes among Yuans on the Vice President's own initiative, and thus this does not create a contradiction of being the coordinator and the coordinated. While the President may choose to act on his or her own initiative, or delegate the Vice President or other proper personnel to coordinate and settle disputes between the Executive Yuan and other Yuans, it would be inappropriate if the President were to delegate such authority to the Vice President in the event the Vice President also serves as the Premier. To avoid such delegation would also avoid conflict of roles. (4) There are precedents where the Vice President has served as the Premier, and the compatibility standard is not violated when considering instances from other countries: To date, two Vice Presidents have also served as Premier for a total of eleven years since the promulgation of the Constitution, which caused no constitutional difficulties or obstacles: Mr. Cheng CHEN from July 1958 to December 1963, and Mr. Chia-Kan YEN from May 1966 to May 1972. These two instances, although occurring during the Period of National Mobilization for the Suppression of the Communist Rebellion, qualify as references given that the Constitution, especially the relevant provisions governing the relationship between the President and Vice President and the standby position of the vice presidency, is no different between then and now. Meanwhile, examples from comparative constitutional perspectives are not many since our Constitution adopts neither a parliamentary nor a presidential system for the central government; the only proper reference is the United States, where the Vice President also serves as the President of the Senate. It demonstrates a certain flexibility for a standby Vice President to serve in another office with substantive power, *i.e.*, allowing one to serve in offices from both the Executive and Legislative branches, even as the U.S. Constitution adopts strict separation

between the Executive and Congress. (5) The President, after the inauguration, may retain the Cabinet in response to the general resignation tendered by the Premier: J.Y. Interpretation No. 387 created a new constitutional order, which requires that the Premier submit a general resignation before the newly-elected members of the Legislative Yuan convene their first session. Premier LIEN's resignation was tendered on January 25, 1996, to fulfill this constitutional requirement. Since the terms of the President and the Legislators are staggered under the current Constitution, Premier LIEN's resignation after President LEE was re-elected was a political courtesy out of political ethics. Whether to accept the resignation, to re-nominate the incumbent or to nominate other candidates, after weighing political losses and gains, falls within the scope of the President's discretion. The opposition claims that because the candidate approved for the Premier position by the Legislative Yuan in February 1996 was "a Premier who had not taken up the position of Vice President," or "an interim Premier whom the President declared would not be reappointed," now that circumstances have changed, the current nomination in fact involves a change of target and the reappointment should be subject to the Legislative Yuan's reconfirmation under the Constitution. Nevertheless, the confirmation process conducted by the Legislative Yuan is to review and decide on a certain nominee's qualifications without any strings or conditions attached, and thus no so-called change of condition or nominee has occurred. Also, since the Legislators that conducted the previous confirmation process are still incumbent, there is indeed no need to repeat the same confirmation process.

[4] Considering the overall arguments, this Interpretation is rendered with the following rationale:

[5] (1) To decide on the constitutionality of the Vice President's concurrent service in the office of Premier; whether and how the political question doctrine applies to this issue is a prerequisite question to resolve. The political question

doctrine (and other similar theories) refers to the theory that determines that certain issues involving political judgments should be made by the constitutionally-created political branches (including the executive and legislative branches), and they are not reviewable by the Judiciary. By generalizing from political practice in many constitutional democracies, numerous instances of the implementation of this theory are available as references. J.Y. Interpretation No. 328, rendered by this Court, set a precedent of how the political question doctrine applies: It determined that the definition of existing national territorial boundaries under Article 4 of the Constitution was a matter of political question and decided that the Constitutional Court, as part of the judicial power, should not interpret that specific provision. Yet, in regard to the constitutionality of the Vice President's concurrent service in the office of Premier, the issue involves a legal question of whether serving in two constitutional offices simultaneously violates the Constitution, not personnel arrangement in politics. Considering the many Interpretations (e.g. J.Y. Interpretation Nos. 1, 15, 17, 20, 30, 74, 75 and 207) this Court has rendered, the constitutional question in this petition concerning the Vice President's concurrently serving as the Premier, therefore, cannot avoid substantive judicial review on the basis of the political question doctrine or other similar theories. The petition, by arguing that simultaneous service in multiple offices is not a political question, is thus granted.

[6] Constitutional conventions are constantly important in countries that have no written constitutions, and the conventions' normative status is beyond question. In countries that do have written constitutions, however, constitutional conventions are only complementary to the written constitutions and thus less important. To become a part of customary law, a so-called convention is a repeating practice that is followed and considered binding upon actions over time. If the binding power of a practice is in question because contradictory action also

exists or because the practice may violate written law, the practice, accordingly, does not become convention as a binding norm. In the present case, while two instances have been found in which the Vice President concurrently assumed the office of Premier, one individual resigned from the Premier's office immediately after being elected as Vice President; moreover, the constitutionality of the former situation was controversial. As a result, those cases have not acquired normativity and become a constitutional convention in this Country.

[7] In regard to the issue of whether occupying two constitutionally-created offices concurrently is permitted: When the Constitution explicitly prohibits such practice, such as the prohibitions on Legislators and Control Yuan Members according to Articles 75 and 103 of the Constitution for example, the prohibitions shall be followed; also, when the two offices are indeed incompatible, the prohibition shall be applicable, and this Court had repeatedly sustained this standard in *J.Y. Interpretation Nos. 20, 30 and 207*. Since the Constitution is silent on whether the Vice President may concurrently assume the office of Premier and no explicit prohibition may be found, this present case should be decided on the compatibility of the two offices. Incompatibility means that occupying both offices would violate the fundamental principles of a constitutional democracy or create the concern of conflict of interest. The U.S. Constitution of 1787 established a strict system of separation of powers among three branches as its fundamental principle, and in France, Article 16 of the 1789 Declaration of the Rights of Man and of the Citizen proclaimed, "A society in which the observance of the law is not assured, nor the separation of powers defined, has no constitution at all." Since then, checks and balances of powers have become the paradigm of every constitutional democracy. Therefore, whether the two constitutional offices are compatible first depends upon whether the principle of checks and balances of powers is violated. Once it is, unless the Constitution provides exceptions (such as the Vice President also serving as President of the Senate under the U.S.

Constitution or a member of the Parliament being permitted to serve as a member of the Cabinet in a cabinet system), such practice is deemed unconstitutional. The scope of each branch (e.g. the legislative, executive, and judicial branches) is determined by the principle of checks and balances; when the function within one branch requires services from different individuals in two organs, holding two offices concurrently would be prohibited as well. For instance, when a Congress adopts bicameralism, a bill is required to be passed by both chambers before enactment. In this case, one person serving in both chambers would violate the Constitution's intent to separate the legislative power into two chambers, and thus concurrent service in two offices would be prohibited by the Constitution. Pursuant to the aforementioned logic, J.Y. Interpretation No. 30 ruled that a Legislator may not serve as a member of the National Assembly concurrently and explained that "if a Legislator may also serve as a member of the National Assembly, it would mix the powers of constitution and bill proposition and referendum, as two incompatible duties, to one person." As to the compatibility issue among the offices of the Head of State, the Premier, and the Cabinet members within the executive branch, the institutional designs of different countries may provide different standards: in a country adopting a parliamentary or semi-presidential system, an individual must not serve in multiple offices concurrently, for a balancing mechanism should be in place between the Head of State and the Premier. In most countries that adopt a presidential system (e.g. the U.S. and Latin American countries), the Head of State is also the chief of the executive branch, so an office of Prime Minister is not part of the governmental design. While the President rarely also serves as a cabinet member (Minister of certain department), the Vice President usually serves in an office of the Minister of certain department concurrently (such as in Costa Rica and Panama). In Switzerland, which adopts what is generally known as a council system, its Federal Council (Conseil Fédéral or Bundesrat) consists



of seven ministers, and the Offices of the President and Vice President of the Confederation are rotated among those ministers. Since the rotation only concerns the internal division of executive duties, it does not violate the basic principle of checks and balances of powers and naturally does not entail an issue of constitutionality. As to the separation of powers between the central and local governments, serving in two offices concurrently is not illegal *per se*. For instance, it is not unusual for the Premier or a Minister to also serve as a mayor or other elected local officer concurrently in France. Our central governmental design is not exactly the same as any one of the abovementioned systems, yet the principle of checks and balances of powers is no less critical than it is in other countries. That the Judiciary, the Examination [Yuan], and the Control [Yuan] operate separately and independently is beyond question. The Executive and the Legislature are clearly separated from each other, and their members may not serve concurrently in another branch – it is the rationale behind Article 75 of the Constitution that prohibits Legislators from serving as an executive officer concurrently. Unlike the constitutions of other countries that require the Speaker of the Parliament to succeed to the office of the President in case the offices of both the President and Vice President become vacant (such as the United States, the French Fifth Republic, and Italy), or the highest official of the judicial branch to serve as Acting President (such as in Brazil’s Constitution of October 5, 1988), our Constitution requires the Premier to serve as Acting President for a term of no more than three months should the offices of both the President and the Vice President become vacant, or if the President and Vice President have not yet been elected when the term of the previous incumbent expires, or if they have been elected but not yet inaugurated (Article 2, Paragraph 8 of the Additional Articles of the Constitution and Articles 50 and 51 of the Constitution). Our Constitution holds the separation principle strictly and keeps the succession within the executive branch, since it is an internal exercise of the executive power; and the

proposal during the enactment of the Constitution that the position of Acting President be rotated among the presidents of the Yuans was rejected. Our Constitution provides that the Premier is to be nominated by the President and confirmed by the Legislative Yuan (Article 55, Paragraph 1), that presidential approval is required before the Premier should veto a given resolution already enacted by the Legislative Yuan (Article 57, Subparagraphs 2 and 3), that the Premier's countersignature is necessary before the President may promulgate a law or issue an executive order, and that, if in the form of an emergency decree, even the approval of the Executive Yuan Meeting is required (Article 37 of the Constitution; Article 2, Paragraph 4 of the Additional Articles of the Constitution). The Executive Yuan, both in theory and in practice, is an institution that operates in the form of a hierarchy led by the Premier; arguments that claim a checks-and-balances mechanism between the offices of the President and the Premier are reasonably sound. Thus, it is obvious that the same individual may not serve in the office of President and the office of Premier. The Vice President is in a standby position for the President; thus, suffice it to say that it would be a violation of the Principle of the Five-Power Division and unconstitutional if the Vice President were also to serve as the chief of the Judicial, Examination or Control Yuan. Nevertheless, since it is not an apparent violation of the Principle of the Five-Power Division if the Vice President serves as the Premier concurrently, it is indeed difficult for this to be abruptly considered unconstitutional from the point of view of checks and balances.

[8] The next issue to be examined is whether there is any division of duties between the Vice President and the Premier, and whether there is a mechanism of checks and balances or conflict of interest between the two offices. From the Draft Constitution issued on May 5, 1936, (commonly known as the May 5th Constitution Draft) to the National Assembly that ordained the current Constitution, the purpose and function of the installation of the Vice President

was always to, and only to, succeed the President in case that office became vacant, or to serve as Acting President in order to carry out its duties. There were no other powers and duties bestowed upon the Vice President under ordinary circumstances. The legislative history is not only evidenced by the related documents concerning the history of the constitution being made but also confirmed in the Petition for Constitutional Interpretation of June 15, 1996, submitted by Legislator Chun-Hsiung CHANG and other Legislators. The original intent of the Constitution's drafters is illustrated in Article 49 of the Constitution: In case the office of the President should become vacant, the Vice President shall succeed until the expiration of the original presidential term, and in case the President should be unable to attend to office due to any cause, the Vice President shall be the Acting President. No other provision of the Constitution is relevant to the Vice President's duties and status. Except for Articles 3 and 4 of the Organization Act of the National Security Council, which provide that the Vice President and the heads of all Five Yuans shall be members of the National Security Council, and that the Vice President shall be the Acting Chairperson in case the President cannot preside over the Council meetings, there is no power authorized to the Vice President under existing statutes. Therefore, from the perspective of legal authority, there are no relationships between the two offices in terms of division of duties, nor can it be said that there is any check and balance mechanism or conflict of interest. This is different from the aforementioned situation where respective legal authorities, either between members of the National Assembly and the Legislative Yuan or between the President and the Premier, are incompatible or cause confusion of roles. Since the Vice President is designed as a backup position that possesses no substantive power except in the case of succession or in an acting capacity, the arguments claiming that time commitment issue might damage to the public interest and trust are thus unfounded.

[9] As mentioned above, while the vice presidency is esteemed, and while it enjoys a certain level of political influence, the Constitution does not bestow substantive and specific authority to this office. Were the Vice President to carry out constitutional power or duties reserved to the President without succeeding or acting in the office of President according to the Constitution, such action would be legally unwarranted. By contrast, according to written law or unwritten convention, a deputy certainly has a duty to assist the chief in an administrative agency, and this practice is not analogous to the Vice President's legal status. In fact, no instances may be found where, under the President's authorization while the President is neither in absence nor unable to serve in the role's functions and duties, the Vice President carries out presidential functions or duties from Articles 35 to 44 and other provisions of the Constitution. Based on a relationship of trust, while serving as a standby, the Vice President inevitably carries out certain temporary or ceremonial functions for the President. Nevertheless, this practice does not entail that the Vice President has legal duties in which to assist the President, thereby meaning it is not the same relationship as between the deputy and the chief of an administrative agency. Accordingly, when the President is in office and able to serve in the role's functions and duties, no conflict of interest would occur if the Vice President were to assume the Premier's office concurrently. In addition, while the Vice President assists and supports the President in a *de facto* sense, the Vice President is not, as the petition claims, the President's subordinate or assistant who is responsible to carry out the President's orders, thus meaning that concurrent service in the two offices would lead to a conflict of interest. With respect to the claim that concurrent service would jeopardize the integrity of constitutional organs' functioning: Since the very function of the Vice President is to be in a standby position to ensure that the continuation of the Head of State may always be continuous, such position would not diminish solely because the Vice President serves concurrently as the

Premier.

[10] Article 2, Paragraph 1 of the Additional Articles of the Constitution provides, “The presidential and vice presidential candidates shall register jointly and be listed as a pair on the ballot.” That the elected President and Vice President belong to the same party or political affiliation with shared political visions is, therefore, a reasonably normal presumption. Nevertheless, to win the election, it is also possible that two individuals with different political visions and affiliations may work across the party lines and register jointly and be listed as a pair on the ballot. Especially when the Vice Presidency becomes vacant, according to the same Article, Paragraph 7, the President is to nominate a candidate and summon the National Assembly for reelection, the President would most likely name one who is, instead of having a shared vision with the President, acceptable to the majority of the National Assembly – it would be similar to the situation where the President nominates a candidate for Premier who needs to be confirmed by the Legislative Yuan. As a result, the President and the Vice President are not necessarily in close relationship and do not necessarily share the same vision. Even if they are in close relationship and they do share the same vision, the Vice President still may neither exercise the power of the Head of State concurrently with the President, nor share the constitutional privilege of the Head of State, not to mention that the President and the Vice President are not in a relationship of daily mutual agency – therefore, it would be absurd to consider them “as one.” Thus, the concerned organ’s argument is not without merit by claiming that the idea of “as one” carries no weight outside the scenario of the election campaign. This situation also explains the relationship between the President and the Premier: when the President has no influence over the majority party (or parties) in the Legislative Yuan, the President’s Premier nomination would have to hinge upon the preference of the majority party (or parties). By contrast, if the President is the chair of the majority party, or the

President has enough influence over the majority party (or parties), the President would most likely nominate a preferable candidate (for Premier) who shares the President's vision, and it would not be controversial on the constitutional level even if the Premier exercises the executive power while closely adhering to the President's agenda and direction. Still, the President and the Premier would not be deemed "as one." Inferring from the idea of "as one", the petition's conclusion argues that the idea that "Whatever the President cannot do, the Vice President cannot do, either" should be rejected. Given the aforementioned relationship between the Vice President and the President, the mechanism involving the power of countersignature under Article 37, reconsideration under Article 57, Subparagraphs 2 and 3 of the Constitution and promulgating emergency orders under Article 2, Paragraph 4 of the Additional Articles of the Constitution and other related provisions should hardly be deemed compromised if the Vice President concurrently serves as the Premier. The checks and balances between the President and the Premier depend upon a system under which two different individuals occupy each position respectively, rather than being determined by the incumbent's political affiliations or propositions. It is definitely not the case that the occupants of the Offices of the President and Premier must uphold conflicting political visions or policies in order to comply with the design of the Constitution and to be deemed constitutional. Furthermore, while the recall and reelection of the Vice President concerns the power of the National Assembly, the Additional Articles of the Constitution do not require the Vice President to report on the state of the Republic to the Assembly or take advice from it. This would not naturally result in a conflict between the National Assembly and the Legislative Yuan, as argued in the petition that the Vice President's concurrent service as Premier would require the incumbent be responsible to both bodies.

[11] Article 49 of the Constitution provides that, in case the office of the President should become vacant, the Vice President is to succeed until the

expiration of the original presidential term, and in case the President should be unable to attend to office due to any cause, the Vice President is to become the Acting President. In case both the President and Vice President should be unable to attend to office, the Premier is to act for the President. In case the offices of both the President and Vice President should become vacant, in accordance with Article 2, Paragraph 8 of the Additional Articles of the Constitution, the Premier is to act for the President and, in accordance with Paragraph 1 of the same Article, call for the election of a new President and Vice President to serve out the term of the preceding President. While the positions of the President, Vice President and Premier will devolve to the same individual if the Vice President concurrently serves as the Premier if the office of the President becomes vacant or if the President cannot attend to his or her duties, as illustrated above, this obviously is not permitted by the Constitution under normal circumstances. Yet this so-called “trinity” scenario does not happen only when the Vice President also serves as the Premier: Article 49 of the Constitution, Article 2, Paragraph 8 of the Additional Articles of the Constitution, and Article 50 of the Constitution, are all designed to deal with the possibility of three positions being consolidated in one individual. Article 51 expressly limits the Premier’s term as Acting President to no more than three months. Once the office of the President becomes vacant, the Vice President who concurrently serves as the Premier should succeed the President, nominate a new candidate for Premier, and seek the Legislative Yuan’s confirmation immediately. Should this situation occur during a recess of the Legislative Yuan, Article 55, Paragraph 2 of the Constitution applies, which requires that the Vice Premier is to be the Acting Premier and shall submit a request within forty days to the Legislative Yuan to convene and to exercise their power of confirmation. If the succession is not due to vacancy but the President’s inability to attend to office, and when such cause lasts for more than three months, Article 51 of the Constitution should apply, *mutatis mutandis*,

to the Vice President who concurrently serves as the Premier, and Article 55, Paragraph 2 of the Constitution is applicable to this situation as well. As analyzed above, since those questions concerning the acting duties of a Vice President who concurrently serves as Premier and succeeds the President are solved to a certain extent, thus the petitioner's argument, which claims that the obstacles created by the concurrent holding of two positions has apparently reached the level of unconstitutionality, needs further supporting justification. As for the matter of impeachment, the Additional Articles of the Constitution, i.e., Article 6, Paragraphs 3 and 5, have different procedural designs for civil servants in general and for the President and the Vice President. In the case that a Vice President who concurrently holds the office of Premier commits an impeachable offense, the applicable procedure shall be based upon the capacity in which the offense occurred, and the penalty and recall procedure thereafter shall be so determined. If the impeachable offense is not related to legal functions or duties, the Control Yuan shall enjoy the discretion of deciding the appropriate process for impeachment. Consequently, while it is a situation where the application of law may be questionable, it would be much less convincing to abruptly conclude that the two offices, i.e., the Vice President and the Premier, are apparently incompatible. As to the petitioner's claim that if the Premier is impeached by the Control Yuan or even resigns due to negligence in carrying out his or her duties, whether one can still serve as the Vice President appropriately is questionable: it is a matter of political concern, not a legal issue.

[12] As Article 44 of the Constitution provides, "In case of disputes between two or more Yuans other than those concerning which there are relevant provisions in the Constitution, the President may call a meeting of the Heads of the Yuans concerned for consultation with a view to reaching a solution." Some consider this the Head of State's power of neutrality; the petitioners also argue that this is a power bestowed to the Head of State and makes it above the Five



Powers; thus, the Vice President would become both the “coordinator” and the “coordinated” if the Vice President also serves as the Premier concurrently, and the Head of State would no longer be neutral. While it is unclear whether this constitutional provision is equal to the power of the Head of State or the power of neutrality, the so-called “power of the Head of State” (*pouvoir royal*), also known as power of neutrality or power to intermediate (*pouvoir neutre, intermédiaire et régulateur*), is a theory that was advocated by a few French scholars (such as Clermont-Tonnerre and B. Constant) in the early nineteenth century, which reserves limited power to the monarchy as the head of state (*see* Carl Schmitt, *Der Hüter der Verfassung*, 3 Aufl., 1985, S. 133ff.). Nevertheless, this theory did not fit well with the practice of a representative democracy in later developments of politics, and has been thus criticized as a fictional concept (*see* Klaus von Beyme, *Die Parlamentarischen Regierungssysteme in Europa*, 2. Aufl., 1973, S. 89). Meanwhile, another constitutional scholar has argued that the Head of State, be that a King or a President, enjoys a political power of coordination *per se*, and explicit constitutional provision is unnecessary (*see* Carl Schmitt, *Verfassungslehre*, 8 Aufl., 1993, S. 287). Hence, whether the power of neutrality has become the cornerstone of modern constitutions remains controversial and has not become a widely accepted principle for the separation of powers. It naturally does not affect the constitutional interpretation of the present case. Even if the President’s exercise of the power under Article 44 of the Constitution may be deemed as the power of neutrality for the Head of State, there is no contradiction created between the coordinator and the coordinated.

[13] Determining an act to be unconstitutional is similar to determining an act to be illegal under other public laws. Before an act is held illegal *per se* under a given public law, which results in that act being *ab initio* and *ipso facto* ineffective, it must be clearly and grossly flawed (known as Gravitäets- bzw. Evidenztheorie). If such level is not reached, then the legal effect of the specific

act is determined by the nature and substance of the flaw, respectively. Therefore, for countries (e.g. Germany and Austria) that establish a constitutional court to conduct judicial review, the court's holdings are not simply dichotomized as constitutional-unconstitutional or valid-invalid. There may be a wide variety of cases where a law is not in conformity with the constitution yet not declared invalid, declared unconstitutional but rendered invalid only after a certain period of time or declared constitutional yet with an admonition to the concerned agency to take certain precautionary actions due to the likelihood that it may become unconstitutional. This Court does not adopt the dichotomy approach either; rather, we build up a diversity of types of holdings that is similar to the German and Austrian models, and many precedents may be found as references. When there are no express constitutional provisions to rule upon, the above criterion is also applicable in deciding whether the flaw of an act under the Constitution has reached the level of being unconstitutional (*see* J.Y. Interpretation No. 342). "Grossly" means the flaw violates the basic principles of the Constitution, such as popular sovereignty, separation of powers, institutional guarantee of autonomy of local governments, or that the restriction on the liberties and rights of the people has encroached on their fundamental nature and exceeded the degree of necessity. "Clearly" means free from any doubts or rational controversy from any perspective. In the present case, the Constitution does not expressly prohibit the Vice President from concurrently serving as the Premier, nor does the case violate the principle of separation of powers, nor is there any incompatibility or conflict of interest between the natures of the two positions. Each side has different but valid points on the issue of concurrent service; the present issue can hardly be deemed as grossly and clearly flawed and hence, to have clearly reached the level of being unconstitutional. Moreover, in accordance with Article 2, Paragraph 3 of the Additional Articles of the Constitution, the discharge order for the original Premier does not take effect until the Legislative

Yuan confirms the new Premier. If the original Premier joins the presidential campaign as the candidate for Vice President and is elected, while there is no doubt that the Constitution does permit the Vice President to serve concurrently as the Premier before the Legislative Yuan is to confirm a new Premier nominated by the President in accordance with the law, naturally such a constitutionally permissible act under that particular circumstance cannot be abruptly interpreted as being unconstitutional. Perspectives provided by the ruling and opposition parties varying on the constitutionality of the concurrent service issue are due, primarily, to the current constitutional design of the Five-Power Division, which adopts several institutional features from parliamentary and presidential systems, and thus naturally conflicting yet sound arguments may be made according to one's institutional preference or genuine belief. Yet, instead of the Constitutional Court, any adjustment of the constitutional design shall be left to the authorized body with the power to amend the Constitution that can consider all facets in response to the needs of the epoch. Nevertheless, since the Constitution intentionally set three offices, i.e., the President, the Vice President and the Premier separately, the original intent was supposedly to assign different individuals to serve in each office. Furthermore, although the original text of the Constitution provides no provision for the re-election of the Vice President should that office become vacant, Article 2, Paragraph 7 of the Additional Articles of the Constitution expressly states, "[i]n case the office of the Vice President should become vacant, the President shall nominate a candidate or candidates within three months so that the Legislative Yuan may elect a new Vice President to serve the remainder of the original term." This additional point is sufficient to demonstrate that the Constitution drafters valued the office of the Vice President enough to ensure that it is not subject to prolonged vacancy so that there would be an immediate successor in case the office of the President should become vacant, and the functions of the Head of State would thus not be

interrupted. While a Vice President who concurrently serves as Premier may make personnel arrangements in accordance with Article 51 and Article 55, Paragraph 2 of the Constitution if the office of the President becomes vacant, such practice can hardly dispel the concerns, as repeatedly argued in the petitioner's arguments, that the "double insurance mechanism" for [power] succession is weakened. In the event that a Vice President who concurrently serves as Premier should encounter the situation that the President cannot attend to his or her duties, the constitutional provisions do not offer a direct solution. This is because under normal circumstances where two different individuals respectively serve as Vice President and Premier, the Vice President can naturally be the Acting President until the cause of such inability diminishes. But if the same individual is both the Vice President and the Premier, the issue of incompatibility of duties will occur with undertaking the actions of the presidential power, because as long as the actions are not taken purely under the auspices of the status of the Premier, there is then a discrepancy with Article 51 of the Constitution, which exclusively stipulates the situation where the Premier serves as the Acting President. It is clear that the situation above is not within the scope of the powers and duties of the succession mechanism under the Constitution and may barely be resolved by cross applications of different provisions. But after all, cross applications would not be in line with the design for normal circumstances under which different individuals should serve in the three constitutionally mandated offices, respectively, and would affect the constitutional mechanism of power succession or action. There are merits in the petitioner's repeated criticisms in this regard.

[14] In sum, the two offices, i.e., the Vice President and the Premier, are not fundamentally incompatible. Yet if these two offices are assumed by the same individual, then the succession or acting mechanism, designed by the Constitution, will be affected in case the office of the President becomes vacant

or the President is incapable of carrying out his or her duties. Accordingly, having the Vice President concurrently serve as the Premier is not completely in conformity with the Constitution's intent of setting separate individuals in the offices of Vice President and Premier, respectively. The facts that triggered the present Interpretation should be properly disposed of in accordance with this ruling. The situation that led to the present Interpretation should be properly attended to according to the principles mentioned above.

[15] (2) The Constitution does not set a specific limit on the Premier's term, which leaves no clear direction regarding when the Premier should be retained or relieved of duties. Article 57 indeed requires the Executive Yuan be responsible to the Legislative Yuan, but since no general and regular election had taken place in the past, the results of partial re-elections could not reflect the public's will on whether the Premier and the subordinates (as well as the Vice Premier and ministers without portfolio) should resign or be retained. To avoid allowing a Premier without term limits, the Premier together with the Premier's colleagues tenders a general resignation to the new President after each presidential election – this more than forty years of practice has gradually become a norm. Nevertheless, no clear basis can be found in current Constitution for the Executive Yuan's general resignation at the inauguration of the new President. In 1992, the Legislative Yuan had begun regular re-election, so the Premier immediately tendered the resignation after the second Legislative Yuan was elected the next February. This Court rendered *J.Y. Interpretation No. 387* on October 13, 1995, which declared that as a constitutional obligation, the Premier shall tender the resignation to the President after the re-election but before the first session of the Legislative Yuan. In addition, if and when the Legislative Yuan disagrees with the Executive Yuan over an important policy, under Article 57, Subparagraphs 2 and 3 of the Constitution, the Legislative Yuan may, in the form of a resolution, request the Executive Yuan to alter that policy;

at the same time, the Executive Yuan may, upon presidential approval, exercise the veto power and transmit the resolution back [to the Legislative Yuan] for reconsideration; also, if the Executive Yuan deems the Legislative Yuan's resolution on a given statute, budget or treaty too difficult to carry out, it may, upon presidential approval, exercise the veto power and transmit the resolution back to the Legislative Yuan for reconsideration. If two-thirds of the Members of the Legislative Yuan decide to maintain the original resolution, the Premier tenders the resignation to the President if the Premier decides not to accept the resolution, and this is also a resignation as a matter of constitutional obligation. There is no reason why the President should not approve of a Premier's resignation for fulfilling their constitutional obligations. There may be a wide variety of other reasons to resign, such as physical health, political scenarios, leadership style, and so forth. Yet those are not constitutional obligations to resign, as is the Premier's resignation at the inauguration of the new President. Since the nineteenth century, regardless of whether in a constitutional monarchy or republic, a typical parliamentary or semi-presidential system under the French Fifth Republic, there have been numerous examples in European states where the cabinet submits its resignation to the newly-inaugurated Head of State, hence the so-called courtesy resignation. There is no common practice among different countries on whether the Head of State should approve such a courtesy resignation, thereby resulting in the change of the cabinet. Even within the same country there may be differences that depend upon the circumstances encountered in different periods (*see* Klaus von Beyme, a.a.O., S. 720-727). With regard to a Premier's resignation that is not constitutionally required, with all things considered including the political situation and other factors, the President may decide to approve the resignation, return the resignation, or retain the incumbent, if the President deems it appropriate. All these choices fall within the scope of the President's constitutional duties and reasonable discretion. As a

governing act, it is not a matter subject to constitutionality review by this Court. The petitioners' argument regarding this issue claims that the President and the Premier do not have a superior-subordinate relationship under the framework of the Five-Power Division Constitution, and there is no superior to approve the Premier's resignation. This argument is not in conformity with the Constitution, since Article 2, Paragraphs 2 and 3 of the Additional Articles of the Constitution stipulate that the Premier's appointment and relief of duties and those personnel who are confirmed by the National Assembly or the Legislative Yuan (such as the Justices of the Constitutional Court, members of the Examination and Control Yuan or the Auditor-General) must all be approved by the President. Suffice it to say that whether there is a subordinate relationship to the President is not relevant. With regard to the constitutional issues regarding a Premier, who has resigned, being inaugurated as the Vice President along with the President, this Court has already explained elsewhere in this Interpretation and will not repeat here.

[16] (3) The Legislative Yuan is the highest legislative organ of the country, as Article 62 of the Constitution expressly stipulates. Article 63 of the Constitution provides the powers of the Legislative Yuan in general: "The Legislative Yuan shall have the power to decide by resolution upon statutory or budgetary bills or bills concerning martial law, amnesty, declaration of war, conclusion of peace or treaties, and other important affairs of the State." In addition, the President's nominations of the Premier in accordance with Article 55 of the Constitution and the Auditor-General of the Control Yuan in accordance with Article 104 are both subject to the Legislative Yuan's confirmation. Moreover, both the Constitution and rules with equal effect expressly prescribe a broad scope of powers to the Legislative Yuan; for instance, among other matters, the resolution to request that the President terminate martial law under Article 39 of the Constitution; the right to listen to the Executive Yuan's in-session report on the administration's policies, and to question the Premier and Principal Officers ministers of the Cabinet under

Article 57, Subparagraph 1 of the Constitution; the right to resolve to alter a critical policy of the Executive Yuan or to decide whether to override the Executive Yuan's veto under the same Article, Subparagraphs 2 and 3; the right to review the Auditor-General's audit report on the final accounts of revenues and expenditures under Article 105 of the Constitution; to resolve disputes derived from the delineation of powers between the central and local authorities in accordance with Article 111 of the Constitution; to draft constitutional amendments and submit them for the National Assembly's referendum in accordance with Article 174, Subparagraph 2 of the Constitution; also, in accordance with Article 2, Paragraph 4 of the Additional Articles of the Constitution, any emergency decree promulgated by the President must be submitted to the Legislative Yuan within ten days for ratification. Furthermore, in accordance with J.Y. Interpretation No. 325 of this Court, the General Conference of the Legislative Yuan may resolve to retrieve the original documents from the related agencies on matters related to a given agenda. These powers that constitutionally belong to the Legislative Yuan and the various resolutions made by the Legislative Yuan through the legislative process in their very nature have a binding effect on the people or related agencies. Yet there is a constitutional boundary to be followed by every governmental agency in exercise of its functions. If certain powers are transferred to other governmental agencies from the legislative, the executive or the judicial branches by the Constitution pursuant to the principle of separation of powers, or a certain design was purposely not adopted by the framers of the Constitution, every government agency is obliged to abide by such arrangements. In the former situation, for instance, the investigative power that generally belongs to the Legislature in other countries is under the authority of the Control Yuan under the Constitution; in the latter, for instance, our Constitution does not adopt the parliamentary no-confidence vote to the Cabinet and the Cabinet's countermeasure to dissolve the



parliament. As to the appointment of the Premier, although the Legislative Yuan has the confirmation power, Article 55 of the Constitution clearly stipulates that such power must be exercised on the premises that the President must nominate and request confirmation from the Legislative Yuan first before the Legislature carries out that power. Also in accordance with Article 57, Subparagraphs 2 and 3 of the Constitution, if the Legislative Yuan does not concur with an important policy of the Executive Yuan, it may, by resolution, request the Executive Yuan to alter that policy; if the Executive Yuan deems a resolution on a statutory, budgetary or treaty bill passed by the Legislative Yuan difficult to implement, it may, upon presidential approval, request that the Legislative Yuan reconsider; if two-thirds of the members of the Legislative Yuan present vote to sustain their original bill, the Premier must immediately accept that resolution or resign from office. This is the rule designed by the Constitution's drafters to substitute for the no-confidence vote and dissolution of parliament mechanisms found in a parliamentary system country, and the various amendments of our Constitution over the years never sought to change it. If the Legislative Yuan were able to pass a resolution, with readings and over half of the votes cast in favor, to request that the President nominate a new Premier candidate so that it could exercise the power of confirmation, and the President did so accordingly, then it would be like creating the type of no-confidence voting system that the Constitution drafters rejected. Furthermore, in accordance with the Constitution, it is the Executive Yuan that is responsible to the Legislative Yuan, and thus the Legislative Yuan does not have the authority to pass a resolution requesting the President's action or inaction, unless the Constitution stipulates otherwise. Therefore, the Legislative Yuan's resolution of June 11, 1996, "requesting that the President to nominate the candidate for the Premier of the Executive Yuan and submit such nomination for the Legislative Yuan's confirmation in the most expedited fashion" exceeded the constitutional authority of the Legislative Yuan

and thus shall be considered advisory and carry no constitutional binding power over the President.

### **Background Note** by Wen-Yu CHIA

On March 23, 1996, Mr. Teng-Hui LEE won the first popular presidential election in the history of the Republic, and the then-Premier, Mr. Chan LIEN was his running mate. On behalf of the whole Cabinet, Mr. LIEN tendered the general resignation to President LEE after their inauguration on May 20. Nevertheless, the President did not “accept” the resignation; instead, he issued a statement in June claiming that it was “unnecessary” to decide on the resignation, and demanded Vice President LIEN to continue his service as the Premier concurrently. The Office of the President justified President LEE’s decision by claiming that Mr. LIEN was recently confirmed by the Legislative Yuan on February 24, after he submitted general resignation to the third term of the Legislative Yuan before it convened its first session on February 1. In other words, Mr. LIEN, as the Premier, had acquired the people’s confidence as represented by the newly elected parliament in February, and since President LEE did not re-nominate but retain Mr. LIEN, the Legislature would have no candidate to confirm. From the perspective of law, while the February resignation was a constitutional requirement defined by J.Y. Interpretation No. 387 (*see* later paragraph), the May resignation was deemed as an act of courtesy by the concerned organ.

Nevertheless, most Legislators from opposition parties were not persuaded by the President. From late May to mid-June, they filed several constitutional petitions to the Court to question the constitutionality of President LEE’s statement and inaction, as well as Vice President LIEN’s concurrent services in two offices. The Court scheduled October 16 and November 1 for oral arguments and rendered this J.Y. Interpretation No. 419 on December 31, 1996. Since the

holding and reasoning of this Interpretation were written in a rather subtle tone, especially on the concurrent service issue, both petitioners and the Secretary-General to the President “welcomed” the outcome but offered contradictory interpretations of the Court’s conclusion. Mr. LIEN eventually retired from the office of Premier on August 21, 1997.

Other historically relevant information is provided as follows:

Months before the election of the third term of the Legislative Yuan, the Constitutional Court rendered J.Y. Interpretation No. 387 on October 13, 1995, to define the Premier’s general resignation after the election of each term of the Legislative Yuan, pursuant to the general will and political accountability, as a constitutional obligation. That Interpretation is relevant to J.Y. Interpretation No. 419 in the sense that it established a general standard, i.e., the general will and political accountability, to determine whether the Premier’s general resignation is constitutionally required or an act of courtesy. The question left to J.Y. Interpretation No. 419 was, then, whether and how this standard was to apply when a new president (instead of a new parliament) was sworn into office. While J.Y. Interpretation No. 387 could have been considered a binding precedent to J.Y. Interpretation No. 419 in common law jurisdictions, constitutional decisions made by the Taiwan Constitutional Court, like in many other civil law tradition countries, are not legally binding to later cases. Instead, they are persuasive authority with *de facto* influence and frequently cited as references in petitions and the court’s own reasoning.

Last but certainly not least, the Additional Articles of the Constitution, including the design of the central government and the checks and balances mechanism between the Executive and the Legislative, were significantly changed in the 1997 constitutional amendments. The most important change was that, while the Executive Yuan remained the highest executive organ and responsible to the Legislative Yuan, the legislative power of confirming the

Premier's nomination was cancelled then. Many constitutional scholars considered this a shift from a parliamentary system to a semi-presidential system, yet other changes strongly supported different characterizations of the 1997 amendments. For instances, the 1997 amendments introduced the no-confidence vote to the Legislative Yuan, as well as the power to dissolve the parliament to the President (with the request of the Premier) as a countermeasure. Also, the Legislature could override the Premier's veto with more than one-half of the total number of Legislators (the original requirement was two-thirds of the Legislators who were present at the meeting). Whether this J.Y. Interpretation No. 419 is still a binding precedent after the 1997 amendments remains an issue to be clarified.