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**J.Y. Interpretation No. 520 (January 15, 2001)\***

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**Withholding of the Fourth Nuclear Power Plant Budget Case**

**Issue**

May the Executive Yuan Unilaterally Withhold the Statutory Budget for the Fourth Nuclear Power Plant?

**Holding**

A budgetary bill, after being approved by the Legislative Yuan and promulgated, becomes a statutory budget. It is comparable in form to a statute. In J.Y. Interpretation No. 391, this Court referred to it by its academic term and called it a law of measures, in light of its differences from an ordinary statutory bill in terms of content, regulatory objects, and deliberation process. Whether it is constitutional or lawful for a competent authority to withhold, *ex officio*, a portion of the spending items in a statutory budget, depends upon the circumstances in question. For funds designated for the maintenance of an agency's normal operations or for carrying out its legally authorized duties, such withholding is not lawful if it should affect the existence of that agency. For funds not involving a change in any important national policy, the competent authority, exercising its discretion consistent with its obligations, may either reduce the spending amount or adjust its implementation, as long as such withholding conforms to the requirements of the Budget Act. The Executive Yuan shall be responsible to the Legislative Yuan as required by the Constitution. It shall also respect the Legislative Yuan's power to participate in the decision-making of important national policies. With regard to a withholding of statutory budget

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\* Translation by Jau-Yuan HWANG, based upon the previous translation by Andy Y. SUN

involving a change in either the statement of the administrative policies or an important policy, the Premier or Ministers and Commission Chairpersons concerned of the Executive Yuan shall report, in due time, to the Legislative Yuan and answer questions therefrom, in accordance with Additional Article 3 of the Constitution and Article 17 of the Act on the Exercise of the Legislative Yuan's Powers. In light of its impacts on energy reserves, the environment and ecology, and related industries, as well as its policy-making process over the years and the complexity of its resultant effects, the withholding of this statutory budget item by the resolution of the Executive Yuan Meeting shall be considered a change in an important national policy. Therefore, the above procedural requirement of reporting and interpellation shall be undertaken as soon as possible. When the Executive Yuan submits its report, the Legislative Yuan is obligated to hear such report. After the report by the Executive Yuan, it may continue to carry out its previous withholding of the budget concerned, if its policy change is supported by the majority of members of the Legislative Yuan. If the Legislative Yuan passes a resolution against or modification of such withholding, all of the government authorities concerned shall, in accordance with this Interpretation, consider the contents of the said resolution and then negotiate a solution or choose an appropriate approach from among the existing constitutional mechanisms, in order to end the stalemate.

## **Reasoning**

[1] This petition for constitutional interpretation was filed by the Executive Yuan in regard to the question of the constitutionality of its decision to halt the construction of the Fourth Nuclear Power Plant and to withhold its related budget, and in regard to the constitutional dispute between itself and the Legislative Yuan on the exercise of the latter's powers. The Executive Yuan also filed a petition for uniform interpretation on the ground that it held a position different from the

Legislative Yuan in regard to the application of the same law. As for the issue of constitutional interpretation, this petition should be granted review since it is in conformity with Article 5, Paragraph 1, Subparagraph 1 of the Constitutional Court Procedure Act (CCPA), which requires that there be a dispute on the application of the Constitution between two central government agencies concerning the exercise of their respective powers. As for the issue of uniform interpretation, this Court finds it does not specify the particular provision[s] of the Budget Act on which the Executive Yuan held a different position from the Legislative Yuan. Therefore, this part of petition does not meet the requirements of Article 7, Paragraph 1, Subparagraph 1 of the abovementioned CCPA. Yet no denial is issued in that this part of the petition is based on the same facts as the part of petition for constitutional interpretation. Furthermore, this case involves a dispute on the application of the Constitution between the Executive Yuan and the Legislative Yuan on the issue of the former's withholding of a statutory budget. As to the issue of whether the electricity supply in question should be provided by nuclear power or other energy, it should be subject to the professional judgment of the energy policy and not be decided by the Constitutional Court exercising the judicial power. Thus this policy issue is not within the scope of this Interpretation. It is so noted.

[2] The budgetary system is a constitutional mechanism by which the executive branch pursues its policy goals, with the participation of the legislative branch in its decision-making. The legislature has the power and duty to deliberate on the budget and supervise its execution. A budgetary bill, after being approved by the Legislative Yuan and promulgated, becomes a statutory budget. It is comparable in form to a statute. In *J.Y. Interpretation No. 391*, this Court referred to it by its academic term and called it a law of measures, in light of its differences from an ordinary statutory bill in terms of content, regulatory objects and deliberation process. That is why it is so named. While the execution of both statutory budgets

and administrative regulations is within the competence of the executive branch, there is still a difference: For a regulation providing the executing authority to an administrative agency, its legal effect will occur when all of its requirements are met. If a law does not authorize any discretion in decision-making or choice of options, the competent agency is obligated to act as mandated by the legal effects concerned. On the other hand, the statutory budget adopted by the Legislative Yuan is an authorizing regulation for the annual spending, annual revenue and future commitment of government agencies (*see* Articles 6 to 8 of the Budget Act). Its legal effects are to provide for the ceiling amount and appropriation purposes of spending items on the part of the executing agencies. The executing agencies are also required to follow the accounting and execution procedures as set forth by the Budget Act, and to be supervised by the final accounting procedures and auditing agencies. With regard to the execution of annual revenues, its implementation will depend on the relevant provisions of various tax laws and public bonds acts. Whether a withholding of certain annual spending automatically constitutes a violation of the Constitution or law should depend upon the circumstances. If it does not involve any change in important national policies and conforms to the conditions provided for under the Budget Act, such as occurrences of special incidents or changes in private economic administration due to management strategies or market factors, the competent authority may, out of discretion consistent with its obligations, either reduce the amounts spent or adjust their implementation. This is the so-called “flexibility of budget execution.”

[3] For funds designated for the maintenance of an agency’s normal operations or the carrying out of its legally authorized duties, withholding such funds at the discretion of the competent authority is not lawful, if it should affect the existence of that agency. In regard to the withholding of a statutory budget that would have the effect of changing either the statement

of administrative policies or an important policy, it is not in conformity with the constitutional mandate that accords to the legislative branch the power to participate in the decision-making process, if the Legislative Yuan is excluded from participation in the withholding process. Hence, the abovementioned flexibility of budget execution does not mean that an administrative agency may, by itself, pick and decide whether to execute any item without regard to the fact that the statutory budget is adopted by the Legislative Yuan with certain normative effects. Under the Budget Act, the execution of appropriated budgets for annual spending must be reviewed period-by-period and level-by-level, and the review reports must be submitted to the Legislative Yuan for record (*see* Article 61 of the Budget Act). There is an express prohibition against commingling of funds among various agencies, divisions, projects or business items during the execution of budgets (*see* Article 62 of the Budget Act). Moreover, the supervising personnel shall be subject to disciplinary sanctions in accordance with relevant regulations, if the agency does not discharge at least ninety percent of its annual programmed budgets (*see* Item 4, Clause 2 of the Operation Guidelines on the Examination, Reward, and Discipline of the Execution of Programmed Budgets by the Executive Yuan and All of Its Subordinated Agencies, revised and promulgated by the Executive Yuan on August 3, 2000). All of the above stipulations are mechanisms for monitoring the execution of budgets, in order to enforce fiscal discipline. J.Y. Interpretation No. 391 addressed the issue involving the review process of budgetary bills. While it indeed differentiated the nature of statutory budgets from that of statutory laws, it did not negate the binding force of statutory budgets. The said Interpretation only indicated that the binding target of budgetary bills adopted by the legislature is the state agencies and not the general public. Thus, it is not well-justified that an

administrative agency always has the power to withhold a statutory budget regardless of the type and nature of spending. While the Budget Act does not expressly prohibit the withholding of statutory budgets, it cannot be abruptly concluded that any administrative agency may arbitrarily decide not to execute the budget. Although the Additional Articles of the Constitution revised Article 57 of the Constitution concerning the provision mandating the Executive Yuan be responsible to the Legislative Yuan, Additional Article 3, Paragraph 2, Subparagraph 2 nevertheless provides: "Should the Executive Yuan deem a statutory, budgetary, or treaty bill passed by the Legislative Yuan difficult to execute, the Executive Yuan may, with the approval of the President and within ten days of the bill's submission to the Executive Yuan, request that the Legislative Yuan to reconsider the bill. The Legislative Yuan shall adopt a resolution on the returned bill within fifteen days after it is received. Should the Legislative Yuan be in recess, it shall convene a special session by its own accord within seven days and adopt a resolution within fifteen days after the session begins. If the Legislative Yuan fails to adopt a resolution within the said period of time, the original bill shall become invalid. Should a majority of the total number of the Legislative Yuan members uphold the original bill, the Premier of the Executive Yuan shall immediately accept the said bill." It follows that, if the Executive Yuan considers difficult and does not intend to execute a budgetary bill adopted by the Legislative Yuan in accordance with its contents, it is to follow the above-mentioned reconsideration process before a budgetary bill is promulgated and becomes a statutory budget. The petition agency argues that the execution of statutory budgets should fall within the core area of the executive power and that administrative agencies wield the discretion on whether or not to execute a statutory budget. Such argument would enable the administrative agencies to

not execute the statutory budget or to exercise any other discretion after its promulgation whenever the administrative agencies maintain it is difficult to execute the budget concerned. If the above submission holds valid, there is no need for the Constitution to provide for the above reconsideration process in regard to budgetary bills.

[4] On top of the function to provide specific figures for the needed funding for the normal operations of state agencies and the execution of their legally authorized duties, a budgetary bill also includes the necessary financial resources for the implementation of various kinds of policy projects. In accordance with modern fiscal and economic theories, a budget also carries the functions of guiding the economic development and affecting the cycles of prosperity and depression. Under the constitutional system of representative democracy, the legislature wields the authority to decide, after deliberation, the budget. Such authority allows the elected representatives to supervise the fiscal spending and alleviate the taxation burdens of citizens. It also enables the legislature to participate in the formation of state polices and administration projects through its deliberation on budgets. In academia, it is known as the parliamentary power to participate in decision-making. After the adoption of the budgetary bill on the nuclear power plant in question, the Legislative Yuan, in its 15th Meeting of the First Session of the Third Term on May 24, 1996, passed a resolution to terminate the construction plan of this nuclear power plant immediately, halt its then on-going constructing process, and to cease execution of the budget concerned, in accordance with the then-applicable Article 57, Subparagraph 2 of the Constitution, which allowed the Legislative Yuan to challenge by resolution the important policies of the Executive Yuan. Then the Executive Yuan, after expressing its

disagreement with the change of this important policy, requested the Legislative Yuan to reconsider the said resolution on June 20 of the same year. It is apparent, therefore, that the withholding in question is a change in an important national policy, considering the impact of the construction of this nuclear power plant on energy reserves, the environment and ecology, and the input-output, as well as the scale of the spending amount and the complexity of coping with the aftermath of such withholding. In the oral arguments, representatives from the Executive Yuan and the Legislative Yuan did not present different opinions on this issue. Hence, the Legislative Yuan had either participated in or adopted relevant resolutions on the compilation of the budget for this nuclear power plant, the previous withholding, and the reconsideration on the resumption of budget execution. Accordingly, the Legislative Yuan shall be given the same opportunity to participate in or adopt a resolution on the second withholding of this budget. Since this statutory budget involves an important policy, its change is obviously different from a change in a budget that does not involve an important policy. The petitioner maintains that, since the execution of a statutory budget is a type of administrative action in substance, it shall wield the discretionary power to make a decision and implement it, or may approve the withholding based upon the Guidelines on the Budget Execution of the Affiliated Units of the Central Government Agencies, which is self-issued without review by the Legislative Yuan. Such submission is not justified. In the same vein, the Legislative Yuan's argument that such withholding is a unilateral decision is not completely groundless.

[5] Democratic politics is a political system governed by public opinion. The path to realize the goal of being governed by public opinion includes the re-election of the President and the members of the Legislative Yuan upon the

expiration of their respective terms. It is also a common phenomenon of party politics that an elected president, through his appointed Premier of the Executive Yuan, may change any previous administrative plan or policy inconsistent with the president's campaign platforms. Notwithstanding a change in party or the reorganization of the Executive Yuan, any change to the plan of the administration or an important policy shall abide by the checks and balances of powers that sustain the constitutional order. Under the rule-of-law principle, even substantive legitimacy is no substitute for procedural lawfulness. Article 57 of the Constitution is designed to provide for the checks and balances of powers between the Executive and Legislative Yuans. Subparagraph 2 of the said Article, providing that the Legislative Yuan may pass a resolution to change an important policy while the Executive Yuan may request reconsideration, was removed by the Additional Articles of the Constitution promulgated on July 21, 1997. Additional Article 3, Paragraph 2, Subparagraph 3 of the Constitution, adopted on the same date, further confers a new power on the Legislative Yuan to cast a vote of no-confidence against the Premier of the Executive Yuan. Nevertheless, other mechanisms of the checks and balances remain parts of the said Additional Article 3, Paragraph 2, and thus the powers of the Legislative Yuan, as provided for in Article 63 of the Constitution, remain intact. Therefore, Article 16 of the Act on the Exercise of the Legislative Yuan's Powers, promulgated on January 25, 1999, still provides that the Executive Yuan shall submit its administration guidelines and administration report to the Legislative Yuan each session. Article 17 of the same Act provides: "[Paragraph 1] With the occurrence of a major event or change in the administration guidelines, the Premier of the Executive Yuan or Department Ministers concerned shall submit a report to the Legislative Yuan at its floor meeting and answer interpellation. [Paragraph 2] At the occurrence of an event stated in the previous Paragraph, the Legislative Yuan may adopt a resolution to invite the Premier of the Executive Yuan or Department Ministers

concerned to submit a report to the Legislative Yuan at its floor meeting and answer interpellation, if and when any member of the Legislative Yuan proposes the above invitation, co-signed or seconded by no less than thirty members.” The so-called “occurrence of a major event” refers to the important national affairs as indicated in Article 63 of the Constitution. The so-called “change in the administration guidelines” includes changes in important policies after a change in party. In response to changes in important affairs or important policies, the Executive Yuan shall submit to the Legislative Yuan the statutory amendment bills, if a statutory revision is needed, or the revised or new regulations after their issuance. The said Article further imposes on the Executive Yuan the obligation to report to the Legislative Yuan and to answer interpellation. As stated above, a statutory budget is different from a statute that is to be enforced repeatedly. The former covers only a specific fiscal year and does not have to be revised by another bill. Upon the occurrence of the said changes, the Premier of the Executive Yuan or Department Ministers concerned shall report to the Legislative Yuan at its floor meeting and answer interpellation. The Legislative Yuan may also, *sua sponte*, adopt a resolution to invite the Premier of the Executive Yuan or Department Ministries to submit their reports and answer interpellation at its floor meeting in accordance with Paragraph 2 of the same Article. Such reporting shall be submitted prior to the changes, except for emergency circumstances or those unforeseeable events. The withholding in this case is procedurally flawed, since it involves a change in an important national policy and was not done in accordance with the abovementioned procedures. On the other hand, the authority concerned [the Legislative Yuan] has not conform to the usual procedures for safeguarding the normal operation of the Constitution either, as it has simply resorted to an outright boycott against the Executive Yuan without requesting those competent heads of agencies to submit their reports in accordance with the procedures governing the exercise of the Legislative Yuan’s

powers. The Executive Yuan shall promptly undertake the abovementioned reporting and interpellation process after announcement of this Interpretation, while the authority concerned is also obligated to hear the Executive Yuan's report.

[6] After reporting to the Legislative Yuan in accordance with the abovementioned Additional Article 3 of the Constitution and Article 17 of the Act on the Exercise of the Legislative Yuan Powers, the Premier of the Executive Yuan and/or Department Ministries concerned may continue to implement their policy changes, if such policy changes are supported by the majority of the Legislators, under the constitutional principle of representative democracy. Should the Legislative Yuan adopt an opposing or different resolution after hearing the reports, such a resolution is considered an objection to the policy change, with the force of reaffirming the effect of the statutory budget. It is different from an advisory resolution with no binding force. Depending on the content of such resolution, all authorities concerned may proceed to settle the dispute in accordance with the appropriate procedures as follow here: The Executive Yuan may either accept the majority opinion of the Legislative Yuan and continue to execute the statutory budget, or may negotiate with all party caucuses for a solution. If no solution can be reached through negotiation, the respective authorities concerned shall act in a proper way pursuant to the existing mechanisms under the Constitution. For example, the Premier of the Executive Yuan may resign *sua sponte* to shoulder the responsibility on the grounds that his or her administration lacks democratic legitimacy and has failed to fulfill the mandates from the President, as he or she could not win the support of the Legislative Yuan for important policies and administration guidelines. Or the Legislative Yuan may propose a vote of no-confidence in order to remove the Premier of the Executive Yuan, pursuant to Additional Article 3, Paragraph 2, Subparagraph 3 of the Constitution. Once a vote of no-confidence is passed, the

Legislative Yuan itself may be dissolved as well. All political parties may take this opportunity of re-election to appeal to the public directly. It is one of the common avenues to settle major political conflicts in a representative democracy. Otherwise, the Legislative Yuan may further enact a statutory bill for the construction of power plants. Although the content of such statute may include provisions applicable to a specific case only, it is considered a special type of statute, *i.e.*, private legislation [or *Einzelfallgesetz* in German] which is not prohibited by the Constitution. It is up to the decisions of the respective authorities concerned as to the choice of a proper avenue. This Court cannot make such a decision, by Interpretation, on their behalf. It necessitates the good faith effort by the ruling government and the opposition, and their willingness to promote the public welfare and maintain the constitutional order. Only with such will can the constitutional democracy then resume normal operation and the social development be guided in the proper direction.

### **Background Note** by Jau-Yuan HWANG

From the beginning, the plan to build the Fourth Nuclear Power Plant (hereinafter the Fourth Plant) has been a highly controversial issue, hotly debated among the government, the opposition parties, and society. In July 1994, the Legislative Yuan (L.Y.) approved its budget. However, after the L.Y. election in December 1995, some Legislators of the then-ruling party, the KMT (Kuomintang), cooperated with the members of the then-opposition party, the DPP (Democratic Progressive Party), and other small opposition parties, against its construction. In May 1996, the L.Y. passed a resolution calling for termination of the construction of all nuclear power plants from then on. This resolution was binding on the Executive Yuan (E.Y.) under then-effective Article 57, Subparagraph 3 of the Constitution. In response, the E.Y. requested the L.Y. to reconsider (*i.e.*, to revoke) the said resolution in June 1996. In October of the

same year, the L.Y. revoked its previous resolution against the construction of nuclear power plants and authorized again the continuous execution of the budget for the Fourth Plant. In May 2000, Taiwan witnessed its first ever party turnover at the presidential level, as Mr. Shui-Bian CHEN of the DPP became the President after winning the presidential election in March. To implement one of his campaign platforms, President CHEN asked the E.Y. to reevaluate the pros and cons of the construction of the Fourth Plant. After several months of public hearings and deliberation, on October 27, 2000, the E.Y. ordered a halt to its construction immediately. At that time, the opposition, including the KMT and PFP (People First Party), still controlled more than two-thirds of the seats of the L.Y. So the opposition-controlled L.Y. quickly passed a resolution demanding that the E.Y. resume its construction, and further boycotted the DPP government by refusing the then-Premier CHANG to submit his report and answer interpellation at the L.Y. On November 10, 2000, the E.Y. filed a petition to the Constitutional Court, seeking to settle this dispute between the E.Y. and the L.Y. About two months later, the Constitutional Court announced J.Y. Interpretation No. 520.

In this Interpretation, the Constitutional Court ruled that the L.Y. shall have the power to participate in the decision-making of important national polices. This Interpretation differentiates budgetary bills into three categories: (1) Statutory Funds: Funds designated for specific agencies or projects, (2) Funds for important national policies, and (3) Funds for non-important national policies. For the first category, the E.Y. and other competent agencies are obliged to spend, as such funds are designated by statutes and not merely by budgetary bills. As to the last category, the competent agencies shall enjoy a wide discretionary power on whether and when to withhold the budget concerned. The second category involving the important national policies is the most curious type. The Constitutional Court held that the budget for the Fourth Plant indeed involved an

important national policy, and that the L.Y. was to enjoy a shared power in regard to its decision-making. Therefore, the E.Y. was to report to the L.Y. “in due time” and answer interpellation by the members of the L.Y. Further, this Interpretation suggests several mechanisms to resolve this specific dispute between the E.Y. and the L.Y. Some commentators offered criticism that this part of reasoning was indeed an advisory opinion.

Pursuant to this Interpretation, the L.Y. convened a special session to hear the report by Premier Chang, followed by interpellation on January 30 and 31, 2001. On January 31, the L.Y. passed a resolution against the withholding of the budget in question and demanded the immediate resumption of the construction of the Fourth Plant. Between February 2 and 13, the E.Y. negotiated with the L.Y. for settlement. On February 13, the opposition parties finally reached a four-point conclusion, which was accepted by the E.Y. Accordingly, the E.Y. announced, on February 14, 2001, the resumption of the construction of the Fourth Plant.

However, J.Y. Interpretation No. 520 and its subsequent implementation did not foreclose further challenges against the Fourth Plant. Particularly, after the 311 Eastern Japan earthquake and tsunami of 2011, popular suspicions against nuclear power plants mounted radically. While the L.Y. continued to appropriate extra funds for the Fourth Plant, it also imposed several safety requirements for the business operation of the Fourth Plant, to be conducted after completion of its construction, in order to make sure that the Plant could withstand the force of huge earthquakes and tsunamis. In 2014, the E.Y. decided to seal and hold the actual operation of the Fourth Plant, after its safety inspection, for three years. After the DPP won the 2016 presidential and parliamentary elections and returned to power, the E.Y. finally, in March 2018, decided to close down the Fourth Plant permanently. The E.Y. also set a policy goal to terminate the operation of all existing nuclear power plants in 2025, and to develop more green and renewable energies (such as wind power, solar power and hydropower)

as the substitute sources of power.

