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Special powers & reports of the Control Yuan

by

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1. Overview

a. Historical background

The founding father of the Republic of China (ROC), Dr. Sun Yat-sen, realized the inadequacy of the western system of checks and balances among legislative, executive, and judicial powers, especially the danger posed by a Congress with impeachment powers, which may cause it to become autocratic. Therefore, he added two powers and created the five-power system, supplementing the deficiency of three-power system with monitoring and investigatory branch (the Control Yuan) independent and separate from the executive and legislative powers.

The Control Yuan was established according to the Constitution of the ROC and the Additional Articles of the Constitution. The first mandate of the constitutional Control Yuan commenced operation on 5 June 1948. It was functioned as an upper house of the parliament by members elected by provincial, municipal, Tibetan and Mongolian representative councils and Overseas Chinese communities.

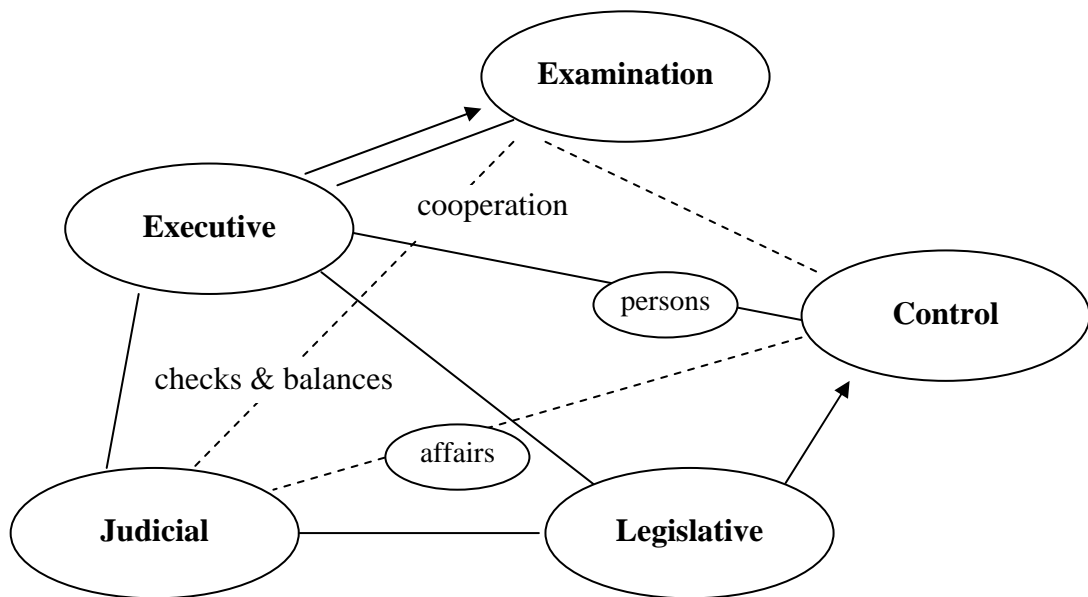
The Additional Articles of the Constitution were approved in May 1992. In accordance with this amendment, members of the Control Yuan were no longer elected by representative councils, and members of the second and third mandate of the Control Yuan were nominated and appointed by the President of ROC with the consent of the National Assembly in 1993 and 1999 respectively. According to the amendment of the Constitution in April 2000, the power of consent of Control Yuan members transferred to the Legislative Yuan (Parliament), and the fourth mandate of members of the Control Yuan were nominated and appointed by the President of ROC with the consent of the Legislative Yuan in 2008.

There are a total of 29 members of the Control Yuan (National Ombudsman), including a president and a vice president. Each member is nominated and appointed

by the President of ROC and confirmed by the Legislative Yuan for a term of six years. There is no limit on the number of terms a member can serve.

The Control Yuan is the supreme supervision agency in the country, on equal footing with the Executive, Legislative, Judicial and Examination Yuans. Unity and consistency are the core principles of the ROC supervision system; consequently, the Control Yuan is the unique official government watchdog. The system is designed this way to avoid the arbitrary exercise of legislative power.

The interaction among powers of five Yuans can be illustrated as the following Chart:



- > Power sharing
- Checks and balances relations
- Cooperation

Resource: Chou Yang-sun, “Control Yuan is not a quasi-judicial institution,” Control Yuan press conference, 29 January 2010

b. Functions and powers

The core function of the Control Yuan is to receive and investigate petitions from the people so as to supervise government ethics and to enhance integrity and efficiency of the public servants. Members of the Control Yuan have broad authority to oversee government and officials. The authority also extends to the judiciary, the police, the military and the general public services. The Control Yuan monitor both central and local public servants, including heads of cabinet ministers, judges, prosecutors, civil servants and employees of state-run business but excluding the President, Vice President, legislators or locally elected legislatures. The main functions and powers of the Control Yuan are as follows:

- (1) Acceptance of people's petitions
- (2) Investigations
- (3) Proposing corrective measures
- (4) Impeachment
- (5) Censure
- (6) Circuit supervision and inspections
- (7) Invigilation
- (8) Audit
- (9) Acceptance of asset-declaration by public functionaries
- (10) Investigation of recusal of public functionaries due to conflicts of interest
- (11) Acceptance of declaration of political donations
- (12) Deciding penalty for violation of Lobbying Act
- (13) Human rights protection
- (14) International interactions

2. Important weapons

The Control Yuan supervises government institutions at all levels. According to the expressed facts of complaints and media reports, the Control Yuan may initiate an investigation if public servants or government agencies violate the law when carrying out duties. In addition, members of the Control Yuan shall also investigate a case on their own motion. Once an investigation is complete, a written report is submitted,

and the Control Yuan shall then proceed to impeachment, censure or bringing up corrective cases to rectify the situation with the relevant institution. As result, proposing corrective measures and impeachment cases are two of the most important weapons of the Control Yuan.

a. Corrective measures

The Control Yuan shall set up various committees according to different subordinate organs of the Executive Yuan to supervise if there is any violation of law or dereliction of duty. According to Article 24 of the Control Act, the Control Yuan, after investigating the work and facilities of executive branches, may propose corrective measures to the Executive Yuan or its subordinate agencies for improvement after these measures have been examined and passed by the relevant committees.

The executive branches, after receiving the proposal, should make appropriate improvement or take other actions immediately, and reply to the Control Yuan in writing within 2 months. If the executive branch fails to reply in time about its improvement and action, or the improvement is not made, the Control Yuan may, through resolution by its relevant committees, question in writing or summon the officials in charge to come to the Control Yuan for questioning. And if an executive branch is found procrastinating with pretence and refuse to take appropriate action for improvement, the Control Yuan may initiate an impeachment against the head of the agency.

b. Impeachment

Impeachment is a vital weapon of the Control Yuan for ensuring an honest government and rectifying government ethics. The Control Yuan shall bring impeachment cases against both central and local government officials involved in dereliction of duty or violation of law, even including judges and prosecutors in the judiciary. According to the stipulations of the Amendment Constitution and the Control Act, a case of impeachment shall be initiated by at least 2 members of the

Control Yuan, and it shall be established after examination by no less than 9 members, excluding members who have initiated the case.

All members of the Control Yuan shall join, in rotation, the examination committee of impeachment cases. Thirteen members, who were not originally involved in the case, will participate. If an impeachment case cannot pass the examination, and if the members who initiated the case persist in their belief that the impeachment is warranted, the case shall be re-examined by another examination committee formed by at least 9 different members. The decision of the second examination is final.

An approved impeachment shall then be referred to the Commission on the Disciplinary Sanctions of Functionaries of the Judicial Yuan to decide the punishment. If the offense involves neglect of duty or violation of law and is serious enough to require immediate action, the case shall be referred directly to the offender's superior in charge for immediate action. If the case involves violation of criminal code or military law, it shall be sent to a court or court martial for appropriate legal action.

Even the President of the Control Yuan cannot direct or interfere with impeachment proceedings. All impeachment cases shall be kept in confidential before being referred to a competent disciplinary organization. Once the examining members decide to announce the case, and refer it to the disciplinary organ, the Control Yuan shall make the announce public.

Should no action be undertaken by the disciplinary organization within 3 months, it shall be questioned by the Control Yuan.

3. Special investigations

Here are some examples of special investigations undertaken in the previous months by the 4th Control Yuan members:

a. Case 1: Misuse of state affairs fund

Since June 2006, former president Chen Shui-bian and former first lady Wu Shuchen were accused by media reports widely of receiving illegal reimbursement from

presidential “state affairs fund,” a government fund earmarked for official purposes to be used at president’s discretion, by using falsified receipts from former family’s personal expenses. Some of the receipts included wedding cookies for former president’s daughter and a speeding ticket issued to his son.

A team of members started a thorough investigation into the case on 5 August 2008, soon after the inauguration of the 4th Control Yuan members. In order to discover the facts, Control Yuan members have interviewed numbers of relevant government agencies and officials that involved in the case, including questioning former president Chen at Taipei Detention Center. President Chen was in custody when interviewed by Control Yuan members, and until now he is still in detention as a suspect of alleged corruption and money laundering.

In November, the Control Yuan impeached seven former government officials involved in the case, including former presidential office deputy secretary-general Ma Yung-chen, former presidential office director Lin Teh-hsun, former family’s bookkeeper Chen Chen-hui, and former accounting and statistics director-general Hsu Jan-yau.

Furthermore, the Control Yuan, on 15 December 2009, passed a resolution to correct the Directorate-General of Budget, Accounting and Statistics (DGBAS) under the Executive Yuan for its negligence and uncooperative manner in handling former president Chen’s alleged misuse of state affairs fund.

The investigation report pointed out the DGBAS had been uncooperative in dealing with the state affairs fund case. It was involved in “serious irregularities” as it postponed investigation into the accountants who handled the fund after the scandal broke and it failed to explain to the public the differences between the state affairs fund and discretionary fund, the “special allowance fund” to which government officials are entitled. Even when the Ministry of Audit (National Audit Office) requested that the DGBAS clarify the case and send documents over and over again, it did not respond until 3 months later.

The amount of annual state affairs fund is between NT\$30 million (US\$930,000) and NT\$50 million, about six to nine times higher than a president’s salary. If the

state affairs fund were a kind of special allowance fund given to a president, it wouldn't make any sense.

President Chen and his wife were given life sentence by Taipei District Court in September 2009 after being found guilty of corruption and embezzlement from the fund, while some of Chen's aides were accused of helping claim reimbursement using receipts from other individuals.

b. Case 2: Inappropriate behavior of Prosecutor General

The Prosecutor-General is a unique cabinet position, serving a term for four years. The Prosecutor-General is nominated and appointed by the President, with the confirmation by the Legislative Yuan. No one within the administrative system can force him to resign. Therefore, anyone who assumes this position must measure himself against the highest standards for professional conduct. A prosecutor-general must maintain public respect and public trust in the administration of justice. Former Prosecutor-General Chen Tsung-ming took office in January 2007 after his appointment was approved by the Legislature. He was the first prosecutor-general endorsed under the new system.

Chen has provoked a great deal of controversy. He was impeached on 19 January 2010 as his behaviour had seriously damaged the credibility of the judiciary and the government's image, by a vote of 8 to 3 at the Control Yuan. The Control Yuan members accused Chen of "inappropriate behaviour." The impeachment pointed to Chen and then minister of justice Shih Mao-ling's meeting at Huang Fang-yen's private residence. Huang was the first family's physician and was claimed by prosecutors for playing a key role in the former president's corruption cases. Control Yuan members also charged Chen with "dereliction of duty," as he failed to come up with pre-emptive measures to prevent Huang from leaving the country. Chen even lied to the Control Yuan about the fact that he personally visited a building contractor named Tsai Chu-hsiung, a witness in president Chen's corruption cases, at his office.

As result, the Control Yuan also demanded by a vote of 7 to 4 that Ministry of Justice bring the matter to a swift resolution. Chen immediately tendered his

resignation after the impeachment was passed. President Ma Ying-jeou has approved his resignation the next day.

c. Case 3: Wenhua MRT line controversies

Launched on 4 July 2009, the newly completed Wenhua Mass Rapid Transit (MRT) line suffered several total breakdowns and a stream of glitches. The new Wenhua line is an extension of the Muzha line. The public blamed most of the troubles on the difficult integration of the new Neihu section of the line contracted to Canada's Bombardier with the Muzha section built by French contractor Matra in 1990s. Since its inauguration last July, the Wenhua line has experienced more than 10 shutdowns, which led to citizens' serious complaints on frequent inconvenience caused by its unstable operations.

Citizens called for a thorough investigation into the Wenhua MRT line controversies, including a probe into the role of President Ma Ying-jeou, then mayor of Taipei City, in the troubles hitting the line. According to the Amendment Constitution, the Control Yuan does not have the power to investigate the sitting president, who can only be impeached by the Legislature. The Control Yuan investigation focuses on the decision to bundle both the civil and electrical engineering elements of the project, into one single civil contract. The project and method of selecting contractors were decided during President Ma's capacity as Taipei mayor between 1998 and 2006. If the operational problems afflicting Wenhua line are related to his decision, should the president shoulder the responsibility for the troubled line that he decided to build whilst mayor of the city?

To avoid constitutional problems because the Control Yuan is not allowed to question a sitting president, President Ma invited four members of the Control Yuan investigating the Wenhua line problems for a tea at the Presidential Palace on 3 February 2010. It was not a formal questioning, which might have been unconstitutional, but it was a tea gathering, which could still meet the members' requirements for clarifying key issues.

Ma said at the meeting the two most disputed decisions made at the time had both turned out right. One was to build the new line through the North and East Taipei

areas on an elevated track with trains designed to handle a medium-level number of passengers. The other two was to link contracts for several engineering aspects of the project. However, the ballooning of the Wenhua line budget to over NT\$60 billion from the initial NT\$30 billion showed that the contracting process was not well handled. The transport ministry may have also been fault for failing to monitor the project. After the meeting, the Control Yuan is likely to bring up corrective cases against Taipei City government over the Wenhua line controversy and demand it makes improvements. It is also likely to demand the Taipei City government seek compensation from relevant contractors for the Wenhua line problems. Up to now, the investigation is still ongoing.