

1963

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Herbert H. P. Ma

*Grand Justice, Judicial Yuan, Republic of China*

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### Recommended Citation

Herbert H. P. Ma, *Chinese Control Yuan: An Independent Supervisory Organ of the State*, 1963 WASH. U. L. Q. 401 (1963).

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# WASHINGTON UNIVERSITY LAW QUARTERLY

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Volume 1963

December, 1963

Number 4

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## THE CHINESE CONTROL YUAN: AN INDEPENDENT SUPERVISORY ORGAN OF THE STATE

HERBERT HAN-PAO MA\*

In recent years, quite a number of articles on the Scandinavian censorial institution of the Ombudsman have appeared in English-language publications.<sup>1</sup> In 1961, the *University of Pennsylvania Law Review* published three articles about this institution,<sup>2</sup> in one of which an American professor made serious suggestions for a similar office for the United States.<sup>3</sup> The purpose of this article is to introduce Western readers to the Control Yuan of the Republic of China. Although similar in purpose to the Ombudsman, the Control Yuan is a unique supervisory organ with roots in modern Chinese constitutional theory and in the traditional Chinese censorial administrative system.

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\* Associate Professor of Law, National Taiwan University, Taiwan, Republic of China.

1. Hurwitz, *The Danish Parliamentary Commission for Civil and Military Government Administration*, 1958 PUB. L. 236; Hurwitz, *Denmark's Ombudsman: The Parliamentary Commission for Civil and Military Government Administration*, 1961 WIS. L. REV. 169; Blom-Cooper, *An Ombudsman in Britain?*, 1960 PUB. L. 145; Hurwitz, *The Danish Ombudsman and His Office*, 63 THE LISTENER 835 (1960); Pedersen, *The Danish Parliamentary Commissioner in Action*, 1959 PUB. L. 115; CHAPMAN, *THE PROFESSION OF GOVERNMENT* ch. 12 (1959); Abraham, *A People's Watchdog Against Abuse of Power*, 20 PUB. ADMIN. REV. 152 (1960); Anderman, *The Swedish Justitie Ombudsman*, 11 AM. J. COMP. L. 225 (1962).

2. Davis, *Ombudsmen in America: Officers to Critize Administration Action*, 109 U. PA. L. REV. 1057 (1961); Jägerskiöld, *The Swedish Ombudsman*, 109 U. PA. L. REV. 1077 (1961); Christensen, *The Danish Ombudsman*, 109 U. PA. L. REV. 1100 (1961).

3. Davis, note 2 *supra*.

## I. THE BASIC THEORY AND STRUCTURE OF THE CHINESE CONSTITUTION

A. *Dr. Sun Yat-sen's Political Doctrine*<sup>4</sup>

The Constitution of the Republic of China is based on the "demarcation of political and administrative powers" and the "separation of five powers" as laid down by the Father of the Republic, Dr. Sun Yat-sen. Although the present Constitution was promulgated in 1947, various drafts based on this theory had been drawn, beginning in 1928.

Dr. Sun believed that government should be all-powerful, but nevertheless controlled by the people. For this reason he distinguished the people's powers for controlling the government, which he called "political powers" from the government's powers, called the "administrative powers." The people's political powers are four in number: election, recall, initiative and referendum. With the powers of election and recall, the people can control the personnel of the government. With the powers of initiative and referendum, the people can control legislation. The government's powers are five in number: the executive power, the legislative power, the judicial power, the power of examination and the censorial or control power.

Dr. Sun adopted a five-power theory of government because he thought that China's traditional systems of civil service examinations and of censorship could remedy defects he had observed in Montesquieu's theory of separation of three powers as adopted by the Western democracies. He believed that the major defects of the Western three-power system arise from vesting the power of examination in the executive department, and the power of censorship and impeachment in the legislature. It seemed to him that the election system was often unable to get able and honest men, and the power of civil examination as a corrective would have the same ill results as the "spoils system," if entrusted to the executive department. He therefore proposed that independence be given to the power of civil examination so that all candidates for public offices, elective as well as appointive, must first prove themselves qualified by examinations. He was convinced that if the censorial power were in the hands of the legislature, it would be abused when the parliamentary majority was not in power in government, and purposely neglected when the parliamentary majority was in power in government. Besides, if the legislature concurrently exercised the power of censorship and impeachment, the resulting strife would impede the legislative function.

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4. For a concise introduction to Dr. Sun Yat-sen's political doctrine see TSUI SHU-CHIN, *SAN MIN CHU I HSIN LUN* [NEW COMMENTARIES ON THE THREE PRINCIPLES OF THE PEOPLE chs. 13-15 (4th ed. Taipei 1959)].

### B. *The Control Yuan and the Five-Power Constitution*<sup>5</sup>

The political system in the Chinese Constitution is unique in many respects. The four political powers of the people are exercised in the Central Government by the National Assembly, composed of delegates of the whole body of citizens, elected by universal, equal and direct suffrage, and by secret ballot.<sup>6</sup> The present constitution deviates somewhat from Dr. Sun's theory by providing for initiative and referendum only for constitutional amendments, not for ordinary legislation, and limiting election and recall to the offices of President and Vice President.<sup>7</sup> The five administrative powers of government are vested in five independent departments called the five "Yuan"; hence the Executive Yuan, the Legislative Yuan, the Judicial Yuan, the Examination Yuan and the Control Yuan. For this reason, the Chinese Constitution is generally known as the "Five-Power Constitution." The Control Yuan, which independently exercises the power of censorship and impeachment, is on an equal level with the other four "Yuan." However, Dr. Sun Yat-sen emphasized that the five powers, though separated, are not unrelated. The purpose of separating the exercise of the five powers is to achieve co-ordination and not to check each other.<sup>8</sup>

## II. THE HISTORICAL BACKGROUND OF THE CHINESE CONTROL SYSTEM

The Chinese control system has a long history, a brief survey of which is essential to the understanding of the present Control Yuan.<sup>9</sup> As early as the Ch'in (221-206 B.C.) and Han (206 B.C.-220 A.D.) Dynasties a group of officials with the title of Yü Shih were appointed by the emperor and charged with supervising and controlling members of the Central Government. In the provinces there were officials with similar functions. However, in those days the Yü Shih was under the chief executive official, Ch'eng Hsiang. It was not until after the Wei (A.D. 220-264) and Tsin (A.D. 265-420) Dynasties that the office of Yü Shih was separated from the executive functions of the govern-

5. For an explanation in English of the Chinese Constitution see HSIEH KWAN-SHENG, *A BRIEF SURVEY OF THE CHINESE CONSTITUTION* (Taipei 1954).

6. The Constitution of the Republic of China (hereinafter cited as CONSTITUTION) arts. 25, 129. An English translation of the Constitution is found in the CHINA YEAR BOOK 1960-1961 at 878 (1961).

7. CONSTITUTION art. 27. Besides, The National Assembly can also by resolution alter the territory of the Republic of China. CONSTITUTION art. 4.

8. TSUI SHU-CHIN, *supra* note 4, at 204.

9. Another note of interest is that while the present Control Yuan is composed of a rather large number of members, the control officials of old days were only a few in number and in this respect they resembled the Scandinavian Ombudsman. It is also interesting to note a resemblance, to some extent, between old China's control officials and the antecedents of the Swedish Ombudsman. Jägerskiöld, *supra* note 2, at 1078-79.

ment and given increased independent power of supervision and control. Beginning with the Tang Dynasty (A.D. 618-907) the power of control was exercised by two classes of officials. The Yü Shih T'ai were responsible for the supervision of the Central Government including the office of Ch'eng Hsiang, and the Chien Yi Ta Fu were advisers and critics of the emperor himself. In the provinces the Control Commissioners conducted investigations and reported cases of impeachment to the Central Government, either openly or confidentially. The Sung Dynasty (A.D. 960-1279) generally followed the Tang system. During the Ming (A.D. 1368-1643) and Ch'ing (A.D. 1644-1911) Dynasties, the names of the Central Government control officials were changed, but their nature and functions remained essentially the same. The officials charged with supervision and control of local government were increased in number.

The powers of the traditional Chinese control officials, Yü Shih, could roughly be classified as follows: (1) to make recommendations on political affairs, (2) to impeach, (3) to investigate executive functions, (4) to investigate officials (both civil and military), (5) to preside or sit at the trial of serious crimes, (6) to defend and clear the innocent, (7) to inspect accounts, (8) to send and file dissenting opinions on the edicts of the emperor or of the state, (9) to destroy documents and (10) to supervise ceremonies.<sup>10</sup> It is obvious that the powers of Yü Shih were therefore very extensive, overlapping the administrative as well as the judicial powers.

While it is true that in old China the censorial officials were only subordinates of the emperor, they were usually men of high reputation, integrity and outstanding achievement in literature and politics. Most of them had a keen sense of responsibility and justice. Not only did they unhesitatingly censure influential officials, they would even risk position and life by attempting to correct the emperor himself if the latter deviated from righteousness. On the other hand, the emperor often either approved of their loyalty to duty or pardoned their antagonism. Execution or punishment of a censorial official was generally recognized as a most unwise thing for an emperor to do. Chinese political history abounds in heroic acts of these censorial officials, and accounts are still familiar to and highly regarded by the Chinese people. It was this sense of integrity and unwavering will to maintain law and discipline that Dr. Sun sought to preserve and develop in the Control Yuan.<sup>11</sup> Western scholars have been loud in their praises of the Chinese censorial system.<sup>12</sup>

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10. CHINA YEAR BOOK 1960-1961 at 145 (1961).

11. DR. SUN YAT-SEN'S TEACHINGS: LECTURES 63; TSUI SHU-CHIN, *supra* note 4, at 199.

12. See, e.g., BURGESS, RECONCILIATION OF GOVERNMENT WITH LIBERTY (1915). See also TSUI SHU-CHIN, *supra* note 4, at 200.

### III. OUTLINE OF THE CONTROL YUAN

The Chinese Control Yuan as an independent supervisory organ is Dr. Sun Yat-sen's ingenious invention. In order that American readers may have a clear idea of the institution, it seems appropriate to describe in some detail its structure, functions, powers and work performed.

#### A. *The Structure of the Control Yuan*

##### 1. *Members of the Control Yuan*

The Control Yuan is composed of elective members who act as representatives of the people in exercising the power of control. According to Art. 9 of the Constitution, the members of the Control Yuan are elected by the provincial and municipal councils, the local councils of Mongolia and Tibet, and Chinese nationals residing abroad in the following numbers: five from each province, two from each municipality under the direct jurisdiction of the National Government, eight from the Mongolian Leagues and Banners, eight from Tibet and eight from Chinese nationals residing abroad.

The total maximum membership of the Control Yuan is 228, but owing to extraordinary circumstances on the China Mainland from 1947 to 1949, immediately after the Constitution was promulgated, only 180 members had been elected by 1949 and of these elected members, many have died and some were left on the Mainland. The membership in 1961 was 85. The members of the Control Yuan are elected as representatives of territories and overseas Chinese bodies, not as those of professions and races. However, feminine membership is guaranteed by law in that there must be a woman among the five members elected from each province.<sup>13</sup> Such protection for feminine membership is widely used in the Chinese Constitution.<sup>14</sup> The allocation of membership is not determined in proportion to population, being in this respect similar to the election system of upper house members of Western parliaments, especially the United States Senate.

Members of the Control Yuan serve for six years and are eligible for reelection.<sup>15</sup> They may not concurrently hold a public office or engage

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13. Law Governing the Election and Recall of Control Yuan Members, art. 10, GENERAL COLLECTION OF CURRENT LAWS AND ORDINANCES OF THE REPUBLIC OF CHINA 3186 (1952). (Hereinafter cited as COLLECTION.)

14. Law Governing the Election and Recall of National Assembly Delegates, art. 4; Law Governing the Election and Recall of Legislative Yuan Members, art. 55.

15. CONSTITUTION art. 93.

in any professional practice<sup>16</sup> in the broadest sense of the terms.<sup>17</sup> Such severe restrictions are imposed in order that the members of the Control Yuan may not let personal interests frustrate their duties. On the other hand, members of the Control Yuan are provided with a guarantee of independence and freedom from interference in the exercise of their powers in that they cannot be held responsible outside the Yuan for opinions expressed or votes cast in the Yuan.<sup>18</sup> Nor may they be arrested or detained without the permission of the Control Yuan except in cases of *flagrante delicto*.<sup>19</sup> However, a member of the Control Yuan may be recalled after six months in office by that body of people which elected him.<sup>20</sup>

## 2. *President and Vice President*

The Control Yuan has a President and a Vice President who are elected by and from among its members.<sup>21</sup>

## 3. *Control Yuan Council*

The Control Yuan's central organ is the Control Yuan Council, which is composed of the President and the Vice President and the members of the Yuan, and meets monthly with the President as Chairman.<sup>22</sup> The Vice President, or in his absence an elected Chairman, may preside in the absence of the President.<sup>23</sup> *A quorum is formed when more than one fifth of the members are present. Except as otherwise provided by the Constitution,<sup>24</sup> adoption of a resolution must be by a majority of the members present.* But the annual meeting in May, which is held for a review of the work done, must be attended by at least one third of all the members.<sup>25</sup>

16. CONSTITUTION art. 103.

17. According to the interpretations of the Council of Grand Justices, the office in charge of the interpretation of the Constitution, members of the Control Yuan are barred from serving as officials of or popular representatives in the Central Government or local governments, as directors or supervisors of public or privately run enterprises, and from practising as lawyers, accountants, engineers, doctors, etc. To Fa Kuan Hui I Chieh Shih (*Interpretations of Council of Grand Justices*, SHIH TZE Nos. 15, 19, 20, 24, 25, 81).

18. CONSTITUTION art. 101.

19. CONSTITUTION art. 102.

20. Law Governing the Election and Recall of Control Yuan Members arts. 14, 15, *supra* note 13, at 3186.

21. CONSTITUTION art. 92.

22. Organic Law of the Control Yuan art. 7, COLLECTION 3177 (1947).

23. Rules of the Control Yuan Council art. 4, *supra* note 13, at 3186.

24. A majority of the whole body of members is needed to impeach the President or Vice President, CONSTITUTION art. 100.

25. Rules of the Control Yuan Council art. 3, *supra* note 13, at 3186.

#### 4. *Committees*

A number of committees are set up to investigate the activities of the Executive Yuan and its various Ministries and Commissions with a view to ascertaining whether or not they are guilty of violation of law or neglect of duty.<sup>26</sup> Each member may serve on two committees, and each committee may have a maximum of thirty members. At present there are ten committees, namely: domestic affairs, foreign affairs, national defense, finance, economic affairs, education, communication, judicial affairs, territorial affairs and overseas Chinese affairs.<sup>27</sup>

#### 5. *Regional Control Offices*

The Control Yuan may, in case of necessity, divide the country into zones and establish Regional Control Offices.<sup>28</sup> This is to enable the exercise of the control power to reach the various parts of the country and is patterned after the traditional system of Control Commissioners in the provinces. Before the retreat to Taiwan in 1949, thirteen Regional Control Offices were established with three commissioners in each of them.

#### 6. *Ministry of Audit*

The Ministry of Audit is a part of the Control Yuan. The Minister of Audit or Auditor General is nominated and appointed by the President of the Republic with the consent of the Legislative Yuan.<sup>29</sup> Under the Auditor General are a Vice Auditor General and ten to twelve Auditors.<sup>30</sup>

#### B. *The Functions and Powers of the Control Yuan*

The Constitution explicitly provides that the Control Yuan is the highest supervisory organ of the state and exercises the powers of consent, impeachment, censure and auditing.<sup>31</sup> In addition, on the basis of the investigations and resolutions of its committees, it may also propose corrective measures to the government.<sup>32</sup> We shall deal with these powers of the Control Yuan separately.

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26. CONSTITUTION art. 96.

27. Organic Law of The Committees of the Control Yuan arts. 2, 3, *supra* note 22, at 3177.

28. Organic Law of The Control Yuan art. 8, *supra* note 22, at 3177.

29. CONSTITUTION art. 104.

30. Organic Law of the Ministry of Audit arts. 4, 5, COLLECTION 3180 (1949).

31. CONSTITUTION art. 90.

32. CONSTITUTION art. 97.



### 1. *Impeachment*

The power to impeach originated in the ancient office of Yü Shih. In the present Constitution it is the most important of all the powers exercised by the Control Yuan.

(1) Scope of Impeachment Power—The scope of the power of impeachment of the Control Yuan is as extensive as that given Congress in the United States Constitution. The President and Vice President of the Republic, public functionaries of the Central Government and local governments, and personnel of the Judicial Yuan and of the Examination Yuan, are all subject to impeachment.<sup>33</sup> However, representatives of the people, such as members of the Legislative Yuan and of the Control Yuan, delegates of the National Assembly and members of provincial, municipal and county assemblies are not included.<sup>34</sup>

The meaning of "the personnel of the Judicial Yuan" if interpreted in accordance with the Articles 77, 79 and 81 of the Constitution, would cover the Grand Justices of the Judicial Yuan, Judges of the Supreme Court and the Administrative Court, and Members of the Committee on the Discipline of Public Functionaries, as well as the Judges of all high courts and district courts.

(2) Grounds for Impeachment—The United States Constitution regards treason, bribery or other high crimes and misdemeanors as reasons for impeachment.<sup>35</sup> Under the Chinese Constitution, the common grounds for the Control Yuan to institute an impeachment against the various objects mentioned above are neglect of duty and violation of law.<sup>36</sup>

(3) Procedure of Impeachment—The procedure of impeachment is of two parts, namely, the institution and the trial. In Western democ-

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33. CONSTITUTION arts. 97, 99, 100. The term "public functionaries" is found in various kinds of Chinese laws aside from the Constitution. However, there exists no unified interpretation as to what kinds of persons are covered by this term. Hence the often raised question whether military personnel are included depends largely upon the law in which the term appears. As far as those parts of the Constitution having to do with the power of the Control Yuan and its related organizations are concerned, there are three articles (arts. 97, 98, 77) containing the term "public functionaries." Unfortunately they fail to tell whether military personnel are implied by the term, and on this constitutionalists are divided in opinion. Theoretically, both civil servants and military personnel should be brought under the power of the Control Yuan in order to achieve unity. In practice the Control Yuan does exercise its supervisory powers over military personnel. The only thing that stands in the way of unity is that military personnel charged with a disciplinary offense are tried by different authorities and in accordance with a different set of disciplinary rules. See note 46 *supra*.

34. *Interpretation of Council of Grand Justices*, SHIH TZE No. 14.

35. U.S. CONST. art. II, § 4.

36. CONSTITUTION arts. 97, 99.

racies the power to institute an impeachment rests with the legislature and usually with the lower house if the legislative body is bicameral. The power to try a case of impeachment belongs to either the upper house of the legislative body, as is the case of the United States,<sup>37</sup> the Supreme Court or Court of Cassation, as is the case of Belgium,<sup>38</sup> or a special court, as is the case of Sweden and Denmark.<sup>39</sup> In China, the power to institute an impeachment is entrusted solely to the Control Yuan; but the procedural requirements for instituting an impeachment and the office for trying a case of impeachment differ with the object of impeachment. An impeachment of the President or the Vice President of the Republic must be proposed by more than one fourth of the members of the Control Yuan and endorsed, after due consideration, by the majority of all the members. It must then be presented to the National Assembly for trial.<sup>40</sup> It should be noted in this connection that the National Assembly, besides having the power to recall the President or the Vice President of the Republic on its own initiative, may also try a case of impeachment of the President or the Vice President of the Republic, instituted by resolution of the Control Yuan.<sup>41</sup> The National Assembly may conduct the trial either at its regular session, which is held once every six years,<sup>42</sup> or at an extraordinary session convened for such a purpose,<sup>43</sup> and, by a resolution of more than two thirds of the delegates present, an impeachment may be passed whereupon the President or the Vice President shall have to vacate his office.<sup>44</sup> On the other hand, an impeachment of a public functionary in the Central Government, including the Judicial Yuan and the Examination Yuan, or in a local government, may be instituted upon the proposal of one or more members of the Control Yuan, with the concurrence after due consideration of no less than nine other members.<sup>45</sup> The case will then be referred for trial to the Judicial Yuan's Committee on the Discipline of Public Functionaries.<sup>46</sup> In no case may the President of the Control

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37. U.S. CONST. art. I, § 3.

38. BELGIAN CONST. art. 90.

39. In Sweden, the Rigsrätt (SWEDISH CONST. art. 102); in Denmark, the Rigsret (DANISH CONST. arts. 59, 60).

40. CONSTITUTION art. 100.

41. CONSTITUTION art. 27; Law Governing the Election and Recall of the President and the Vice President arts. 10, 12.

42. CONSTITUTION arts. 29, 47.

43. CONSTITUTION art. 30.

44. Law Governing the Election and Recall of the President and Vice President arts. 10, 12, COLLECTION 25 (1947).

45. CONSTITUTION arts. 98, 99.

46. Control Law art. 9; Law for the Discipline of Public Functionaries art. 10, COLLECTION 3055 (1948). If the impeached happens to be a military officer, the

Yuan attempt to influence or interfere with the proceedings of impeachment.<sup>47</sup>

It is appropriate here to briefly describe the Committee on the Discipline of Public Functionaries. The Committee is an organization under the Judicial Yuan, composed of nine to fifteen members, five to seven of whom must be former judges of the selected appointment rank.<sup>48</sup> Headed by a Chairman, the Committee is responsible for imposing disciplinary punishments on public functionaries guilty of violation of law or neglect of duty.<sup>49</sup> The punishments are of six grades, namely: dismissal, suspension, demotion, reduction in salary, demerits and reprimand.<sup>50</sup> This committee is charged only with the power to try cases referred to it by the Control Yuan or other organizations that call for disciplinary measures. It cannot indict on its own initiative. The trial is ordinarily conducted by brief and the impeached defendants may be summoned for questioning when the Committee deems it necessary.<sup>51</sup> If, on the other hand, a case of impeachment has not been concluded by the Disciplinary Committee after three months, the Control Yuan may question about it, and if questioning and investigation reveal intentional procrastination, the Control Yuan may institute impeachment proceedings against or censure the culpable officials of the Disciplinary Committee.<sup>52</sup>

Although an impeachment of the President or Vice President of the Republic is tried by an organization different from that which tries impeachments of ordinary public functionaries, the punishments imposed by both these organizations are limited to disciplinary measures. Cases involving criminal charges or military criminal law are subject to the jurisdiction of ordinary courts or military tribunals.<sup>53</sup> We shall come back to this later.

case is, in practice, referred to a competent military organization to be dealt with in accordance with a different set of rules called Law for the Discipline of Army, Navy and Air Force Personnel.

47. Control Law art. 12.

48. Organic Law of the Committee on the Discipline of Public Functionaries arts. 1, 2, COLLECTION 2857 (1948).

49. Law for the Discipline of Public Functionaries art. 2, *supra* note 46, at 3055.

50. Law for the Discipline of Public Functionaries art. 3 § 1, *supra* note 46, at 3055. Suspension, demotion, reduction in salary and demerits do not, however, apply to political officials, *i.e.*, policy-making officials as contrasted with administrative officials (Sec. 2 of the same article).

51. Law for the Discipline of Public Functionaries art. 15, *supra* note 46, at 3055.

52. Control Law art. 17. In such a case, who shall try these impeached disciplinary officials is a question yet to be answered, as it would be impossible for members of the Disciplinary Committee to try themselves.

53. CONSTITUTION art. 52; Control Law art. 15.

In one respect the Chinese impeachment system is unique. As indicated above, to impeach a Central Government official including the President of a Yuan, all that is required is the proposal of one Control Yuan member, endorsed by nine others. This procedure is markedly more simple than the systems of other countries.

## 2. *Censure*

When a public functionary is suspected of law violation or neglect of duty that makes the immediate termination of his duties necessary, a member of the Control Yuan may first file a written censure which, after having been confirmed by no less than three other members, will be forwarded to the superior of the functionary. If the alleged offense is against criminal or military law, the case must be referred to the appropriate court for action.<sup>54</sup> Pending court proceedings the superior of the functionary in question must take appropriate action in accordance with the provisions in the Law for the Discipline of Public Functionaries<sup>55</sup> within one month after receipt of the written censure. He may suspend the functionary from office or take other immediate measures against him. If the superior considers no action necessary, he must communicate his reasons to the Control Yuan.<sup>56</sup> If he takes no action or the action he takes is considered inadequate by the Control Yuan, the functionary in question may be impeached. Under such circumstances, when the impeachment proceedings finally result in the functionary's being punished, his superior will be held responsible for neglect of duty.<sup>57</sup>

While impeachment includes within its scope the President and Vice President of the Republic, censure is limited to general public functionaries. Instituting impeachment requires endorsement of no less than nine members of the Control Yuan, while censure can be endorsed by three members. An impeachment of ordinary public functionaries is referred to the Committee on the Discipline of Public Functionaries for action, while a case of censure is referred to the superior of the censured functionary. Thus, it is much quicker and more effective for the Control Yuan to seek to censure a public functionary than to impeach him.

## 3. *Corrective Measures*

The Control Yuan, on the basis of the investigations and resolutions of its committees, may propose corrective measures and forward

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54. Control Law art. 19.

55. If the functionary is a military officer, he is subject to the Law for the Discipline of Army, Navy and Air Force Personnel.

56. Control Law art. 21.

57. Control Law art. 22.

them to the Executive Yuan and the Ministries and Commissions concerned, directing their attention to effecting improvements.<sup>58</sup> Upon receipt of such a proposal the Executive Yuan or the Ministry or Commission concerned must immediately take corrective action and report to the Control Yuan in writing. If a reply is not received in two months the Control Yuan will make an inquiry.<sup>59</sup>

There are two points concerning the Control Yuan's power to propose corrective measures which call for some discussion.

(1) The Scope of Corrective Measures—What kinds of work or activity of the administrative department of the government are subject to corrective measures is open to question. It would seem desirable that corrective measures be directed not only towards particular actions of the government but towards its general policy as well. Moreover, corrective measures must not be restricted to government actions that are in violation of law, but should also include those that are inappropriate. Only in this way can the Control Yuan truly help to keep the Government not only clean but effective, too.

(2) The Effect of Corrective Measures—It is quite clear that on receipt of the Control Yuan's proposal for improvements, the Executive Yuan or the Ministry or Commission concerned must take actions to effect such improvements within three months. However, the Executive Yuan in carrying out a certain policy may take a view different from that of the Control Yuan as to what actions are "appropriate" or "inappropriate," and the case becomes one of opinion. Under such circumstances does the Executive Yuan or the Ministry or Commission concerned have to bow to the Control Yuan's corrective measures? This important problem has yet to be solved.

The power to propose corrective measures is different from the powers to impeach and to censure; the latter are directed against "personnel" of the government, the former against the "actions" of the government. A public functionary in the Central Government or in a local government, if guilty of violation of law or neglect of duty, may be impeached or censured, but the decisions or actions for which he is officially responsible are not necessarily improved. Therefore, the Control Yuan is given the power to call for improvements. On the other hand, not infrequently, public functionaries innocent of violation of law or neglect of duty make decisions so inappropriate as to be detrimental to public good. Here again it is necessary for the Control Yuan to propose corrective measures.

Impeachment or a censure is instituted upon the proposal and endorsement of individual members of the Control Yuan. A corrective

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58. CONSTITUTION art. 97; Control Law art. 24.

59. Control Law art. 25.

measure, however, is subject to the investigation and resolution of an appropriate committee of the Control Yuan. The committees are set up in accordance with the number and nature of the various Ministries and Commissions of the Executive Yuan, to watch and investigate their activities.<sup>60</sup> The committees maintain a continuing surveillance of their respective administrative departments.

#### 4. *Investigation*

The Control Yuan is entrusted by the Chinese Constitution with an accompanying power of investigation so that the exercise of its control powers will be facilitated. In exercising its powers of impeachment, censure and proposal of corrective measures, the Control Yuan may, through its members, committees, regional control offices, other officials or even other organizations, conduct investigations which include in particular the examination of the original orders issued by the organization concerned and all other relevant documents.<sup>61</sup> If necessary, and with the permission of the head of the organization concerned, the investigators may even take away such documents in whole or part for a certain period of time. Unless the head of the organization concerned deems it detrimental to the national interest, as in the case of national defense and diplomatic secrets, he cannot reject such a request.<sup>62</sup> This right of free access to public records inevitably raises the question whether the documents of a lawsuit in trial in an ordinary or military court are also subject to such inspections. There is no law that exempts these documents from the Control Yuan's investigations. However, in order to avoid influencing the judge, it is deemed advisable not to investigate such documents unless absolutely necessary.<sup>63</sup>

The Control Yuan's investigations may also require the complainant and the person under investigation to be present at a designated place for questioning.<sup>64</sup> Control Yuan investigators, in conducting an investigation, may call upon the local government or court or other organizations for help, and may, as the case demands, seek the assistance of civil or military police.<sup>65</sup>

The extensiveness of the Control Yuan's power of investigation is

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60. CONSTITUTION art. 96.

61. CONSTITUTION art. 95; Control Law arts. 26, 30; Regulations Governing the Enforcement of Control Law arts. 9, 10, COLLECTION 3197 (1953).

62. Control Law art. 27.

63. In fact, disputes between the Control Yuan and civil as well as military courts over the investigation of documents of a case pending decision in a court have occurred in the past, though rarely.

64. Control Law art. 26.

65. Control Law arts. 28, 29.

further evidenced by the fact that even private organizations with their personnel and documents may be brought under the investigation of the Control Yuan.<sup>66</sup> It is, however, understood that such practices are justified only when the persons or documents investigated are involved in a case against a public functionary or government agency.

In conducting an investigation, the Control Yuan's members or other designated investigators must present a specially issued identity card. They must also keep confidential whatever information they obtain.<sup>67</sup> The Control Yuan's power of investigation is designed for gathering information or evidence concerning the offenses of public functionaries to be used as grounds for censorial actions. It is therefore somewhat different in spirit from the corresponding investigation power of the United States Congress, which is used to discover abuses of administrative authority, as well as to determine the need for new legislation, because the United States Congress usually makes its investigations through open hearings.

Finally, it should be noted that investigations may be started by the Control Yuan *sua sponte* or upon receipt of written complaints from the people.<sup>68</sup> In the latter case, the Control Yuan may refrain from action if it finds the complaint (1) has nothing to do with a public functionary or (2) has nothing to do with violation of law or neglect of duty on the part of a public functionary or (3) contains accusations vague and anonymous or (4) is not within its jurisdiction.<sup>69</sup> In the case of (4) the original complaint should be returned to the complainant together with reasons.<sup>70</sup> However, Control Yuan members are required by law constantly to make investigations spontaneously.<sup>71</sup> All investigations must be concluded within two months.<sup>72</sup>

### 5. *Consent and Audit*

The Chinese Control Yuan is also entrusted with the power of consent and the power of audit. The President, the Vice President and the Grand Justices of the Judicial Yuan, and the President, the

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66. Control Law art. 26.

67. *Ibid.*

68. Regulations Governing the Enforcement of Control Law art. 11, *supra* note 61, at 3197.

69. Regulations Governing the Treatment by the Control Yuan of Documents of Impeachment and Censure and Written Complaints from the People No. 7, COLLECTION 3202 (1952).

70. *Id.* at No. 6.

71. Regulations Governing the Enforcement of Control Law art. 11, *supra* note 61 at 3197.

72. Regulations Governing the Enforcement of Control Law art. 14, *supra* note 61 at 3197.

Vice President and the members of the Examination Yuan are to be nominated and appointed by the President of the Republic with the consent of the Control Yuan.<sup>73</sup> For the censorial department to have the power of consent to appointments of government officials is totally strange to the traditional Chinese control system. Undoubtedly it is borrowed from the West and can be best compared to the power of consent enjoyed by the United States Senate, although the scope of authority of the latter is much larger.

The Control Yuan exercises the power of audit through the Ministry of Audit, which takes charge of the following functions: (1) the supervision of the execution of budgets and the checking of receipts and disbursements of all government offices; (2) the examination of budgets and budget statements of all government offices; (3) the investigation of illegal or dishonest financial practices of all government offices.<sup>74</sup> In Western countries the audit power is almost invariably exercised by an office independent of the executive department of the government, though often responsible to the parliament.<sup>75</sup> In China the audit power is also vested in an independent body called the Ministry of Audit, but it is subject to the jurisdiction of the Control Yuan. Such an arrangement has its merits in that if the Ministry discovers any violation of law, neglect of duty or any irregularities in government financial matters, it can readily bring the matter to the Control Yuan, which can then impeach or censure the officials responsible or propose corrective measures to the organization concerned. The Constitution provides that the Auditor General shall, within three months after the presentation of the budget statement by the Executive Yuan, complete his audit and submit a report to the Legislative Yuan.<sup>76</sup> The government's budget is originally examined and approved by the Legislative Yuan. This relationship between the audit power and the Legislative Yuan probably accounts for the fact that the Auditor General is appointed by the President of the Republic only with the consent of the Legislative Yuan.<sup>77</sup>

Aside from all these powers, the Control Yuan is further empowered to supervise examinations given by the Examination Yuan or its authorized agency.<sup>78</sup>

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73. CONSTITUTION art. 79, 84.

74. Law of Audit arts. 1-3, COLLECTION 3180 (1949).

75. Great Britain and the United States are two examples.

76. CONSTITUTION art. 105.

77. CONSTITUTION art. 104.

78. Law of the Supervision of Examination art. 1.



### 6. *A Summary of the Functions and Powers of the Control Yuan*

The powers of impeachment and censure are exercised by members of the Control Yuan or its regional offices. The power of proposing corrective measures is exercised by members of the Control Yuan or its regional offices, subject to the examination and resolution of the committee concerned. The power of investigation may be exercised by members of the Control Yuan, its committees or its regional offices. It is worth restating that the Control Yuan may conduct investigations upon receipt of complaints from private citizens or on the basis of newspaper reports or materials as well as upon information gained by its own inspections and inquiries.<sup>79</sup> Ample play is given to the exercise of the power of investigation, thus providing the Control Yuan with every possible opportunity to uncover ill practices of public functionaries in the execution of law and the performance of their duties.

### C. *A Description of the Control Yuan's Exercise of Its Powers*

The work actually done by the Control Yuan since the enforcement of the permanent Constitution in 1947 is quite impressive. Figures are available for the period from 1947 to the end of October of 1961.<sup>80</sup> In that period, there were filed 139 cases of impeachment with 450 officials impeached, and 376 cases of censure with 983 persons censured. Among the impeachment cases, the impeachment of Vice President of the Republic Li Tsung-jen in 1952 with his subsequent recall by the National Assembly in 1954 was outstanding.<sup>81</sup> So was the impeachment of O.K. Yui, President of the Executive Yuan (an office often popularly called "Premier"), in 1957, which resulted in Yui's being reprimanded by the Committee on the Discipline of Public Functionaries.<sup>82</sup> In that same period corrective measures proposed numbered 287. There were 31,221 written complaints received from private citizens.<sup>83</sup> Of these, 5,151 cases were followed by investigations conducted by the Control Yuan members themselves or

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79. Regulations Governing the Enforcement of Control Law arts. 8, 9, *supra* note 61, at 3197.

80. *Secretariat of the Control Yuan, A Description of the Exercise of the Control Power by the Control Yuan* (1962).

81. For a detailed account of the case see KUO MIN TA HUI SHIH LU [2 THE NATIONAL ASSEMBLY—A COLLECTION OF ITS PROCEEDINGS AND RELATED DOCUMENTS ch. 3 at 165-98 (Nat'l Assembly 1961)].

82. Kung U Yuan Cheng Chieh Wei Yuan Hui I Chüeh Shu [*Decision of the Committee on Discipline of Public Functionaries*, CHIEN TZE No. 2203, January 31 of the 47th year of the Republic of China (1958)].

83. This does not include the figures for the year 1949 because the Control Yuan's files of that year were left behind on the China Mainland.

other designated investigators, and 9,389 cases were followed by investigations conducted at the request of the Control Yuan by the organizations involved in the complaints.

In order to have a clearer conception of the Control Yuan's actual work, let us take the figures for its various kinds of work in the year from July 1959 to June 1960.<sup>84</sup> There were ten cases of impeachment with a total number of 38 civil officials impeached, of whom nine were of the selected appointment rank, sixteen of the recommended appointment rank and thirteen of the designated appointment rank.<sup>85</sup> All ten cases were referred to the Committee on the Discipline of Public Functionaries, with two of them also referred to civil courts.

Censures filed by the Control Yuan in that year totaled sixteen, with 56 persons censured, among whom 54 were civil officials of the selected, recommended and designated appointment categories, and two were military officers. All cases were referred to offices to which the accused belonged, with three cases being concurrently referred to civil courts.

In that same period corrective measures proposed by the Control Yuan numbered fifteen. All but one were addressed to the Executive Yuan, with four proposals pertaining to domestic affairs, two pertaining to finance, three pertaining to economic affairs, two pertaining to education, three pertaining to judicial affairs and one pertaining to overseas Chinese affairs.

Complaints from the people in that period alone amounted to 3,155 cases. Disposition of these was as follows: 351 cases led to investigations conducted by the Yuan; 791 cases led to investigations conducted by other interested agencies; 219 cases were forwarded to the Committees of the Yuan; 975 cases were forwarded for reference in other cases; 56 cases were sent back to the complainants; 130 cases were forwarded to correct receivers and 633 cases were kept on file.

As for investigations started on the Control Yuan's initiative, there were 493 cases, of which 335 cases were conducted by members of the Control Yuan, 61 cases by investigators of the Control Yuan, and 132 cases by other persons designated by the Control Yuan. And as far as the objects of these investigations are concerned, 65 cases pertained to Yuans, Ministries and Commissions, 113 cases pertained

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84. The figures are found in the CHINA YEAR BOOK 1950-1961 at 200-05 (1961).

85. The Chinese civil service system, roughly speaking, has four ranks: the special appointment officials such as ministers, the selected appointment officials such as department chiefs of Ministries, the recommended appointment officials such as section chiefs of Ministries and the designated appointment officials such as ordinary clerks.

to the Taiwan Provincial Government, 214 cases pertained to counties and municipalities, 45 cases pertained to civil courts, 48 cases pertained to military courts and 8 cases pertained to "others."

#### IV. THE CONTROL YUAN'S CONTRIBUTION TO LAW

While the primary function of the Control Yuan is to serve as a watchdog of the government, it has made a valuable contribution to law and the legal system through its demands for interpretation of the Constitution and laws. According to the Chinese Constitution, the powers of interpretation of the Constitution and unified interpretation of laws and ordinances are entrusted to the Judicial Yuan's Council of Grand Justices.<sup>86</sup> Section I of art. 4 of the Law Governing the Council of Grand Justices provides that an organization of the Central Government or of a local government may request an interpretation of the Constitution under one of the following circumstances: (1) when it entertains any doubt in the application of the Constitution involved in the exercise of its powers, (2) when it comes into conflict with some other organization in the application of the Constitution involved in the exercise of their respective powers, (3) when it entertains any doubt as to whether the law or ordinance it is to apply contravenes the Constitution. The Control Yuan has rather frequently made such requests, and the results have often enhanced the administration of justice and the protection of civil liberties. A few instances in recent years may be cited in illustration of this.

1. When doubt was raised over the application of cases of *flagrante delicto* as referred to in certain articles of the Constitution, the Control Yuan requested and obtained an interpretation from the Judicial Yuan's Council of Grand Justices, which rendered clear the meaning of such cases of *flagrante delicto* as referred to in the various articles of the Constitution.<sup>87</sup>

2. There has been doubt as to whether the present system of placing the high courts and district courts under the Ministry of Justice of the Executive Yuan is in conflict with the Constitution, which explicitly provides in Art. 77 that the Judicial Yuan shall be the highest judicial organ of the State and shall have charge of civil, criminal and administrative cases and over cases concerning disciplinary measures against public functionaries. The Control Yuan therefore requested several times that an interpretation be given by the Council of Grand Justices of the Judicial Yuan. As a result of such requests, the Council of Grand Justices finally ruled that the courts

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86. CONSTITUTION arts. 78, 79.

87. The articles concerned are 33, 74 & 102. *Interpretation of Council of Grand Justices*, SHIH TZE No. 90.

should be placed under the jurisdiction of the Judicial Yuan in conformity with the provisions of the Constitution.<sup>88</sup>

3. Following a discussion at its 1958 annual meeting as to whether the Law Governing Punishment of Police Offences and the Publication Law are in contravention of the Constitution, the Control Yuan decided that the Council of Grand Justices should be requested to interpret the following two points:

- (i) Whether punishment of individuals by police authorities provided in the Law Governing Punishment of Police Offences is at violence with Art. 8 of the Constitution.<sup>89</sup>
- (ii) Whether cancellation or revocation of registration or suspension of publication for a special period of time should be subject to court decrees.<sup>90</sup>

The raising of these issues, which are yet to be settled by the Grand Justices, is enough to show the Control Yuan's concern over the rights and liberties of the people as well as its capability to ensure the safeguarding of them.

## V. THE CONTROL YUAN AND THE COURTS

It has been mentioned before that the Control Yuan's exercise of its powers depends upon a number of other organizations for its completion, such as the National Assembly and the Committee on the Discipline of Public Functionaries. However, inasmuch as many cases that come within the jurisdiction of the Control Yuan may also be brought before the courts, the relationship between the Control Yuan and the courts is an interesting one. In the following, we shall deal with the Control Yuan's relation to ordinary courts and to the Administrative Court.

### A. *The Control Yuan and Ordinary Courts*

When the Control Yuan files an impeachment or a censure against a public functionary of the Central Government or a local government for violation of law or neglect of duty, it is in the position of a "prosecutor" only. The trial and judgment of the case rest either with the

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88. *Interpretation of Council of Grand Justices*, SHIH TZE No. 86.

89. Article 8 of the Constitution provides, among other things, that no person shall be tried or punished other than by a law court in accordance with the procedure prescribed by law.

90. By article 36 of the Publication Law of 1958, a competent authority in the Central Government, or in a local government if it finds a publication in violation of the provisions of the Publication Law, may by an administrative measure cancel its registration or enforce suspension of publication for a certain period of time.

National Assembly or with the Committee on the Discipline of Public Functionaries. But, in both instances, the punishments which may be imposed by these related organizations are always limited to such disciplinary measures as recall, dismissal, suspension, demotion, reduction in salary, demerits and reprimand. If, however, the public functionary concerned is at the same time guilty of a crime or an offence against criminal law, the trial and judgment of that part of the case rest exclusively with ordinary courts.<sup>91</sup> Such a case may be discovered by the Control Yuan when it is first being filed as an impeachment or a censure, or by the disciplinary organization when it is being tried.<sup>92</sup> At either time, the case may be directly turned over to the competent court.<sup>93</sup> In this connection, the position of the Control Yuan or the disciplinary organization is only that of an "informer." The decision to prosecute lies completely with the procurator of the court.<sup>94</sup> If, after preliminary investigation, the procurator deems that there are insufficient grounds for believing an offence has been committed, he may make a ruling "not to prosecute" and the case cannot be tried.<sup>95</sup>

In this respect, the Chinese Control Yuan again differs from the Western systems, including the Scandinavian Ombudsman. In Western democracies an impeachment which the lower house files against an official suspected of a criminal offense, may be used by the upper house or a competent court<sup>96</sup> as basis for conducting a trial and making a decision imposing penal sanction. In the case of the Swedish Ombudsman, a prosecution brought by him against an official suspected of a criminal offence is also enough for an ordinary court to conduct a trial and to pass a judgment.<sup>97</sup> The Danish Ombudsman would have to order public authorities to institute criminal proceedings first,<sup>98</sup> which seems to bear some resemblance to the Chinese Control Yuan.

When a certain act of a public functionary is already under criminal investigation or being tried in a criminal court, no disciplinary procedure concerning the same act shall be started by the Control Yuan.<sup>99</sup>

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91. CONSTITUTION arts. 98, 99.

92. Control Law art. 15; Law for the Discipline of Public Functionaries art. 22, *supra* note 46, at 3055.

93. *Ibid.*

94. CODE OF CRIMINAL PROCEDURE art. 243 (1945).

95. *Id.* at arts. 231, 24f.

96. BELGIAN CONST. art. 90.

97. Jägerskiöld, *The Swedish Ombudsman*, 109 U. PA. L. REV. 1077, 1082, 1087 (1961).

98. Christensen, *The Danish Ombudsman*, 109 U. PA. L. REV. 1100, 1114 (1961).

99. Law for the Discipline of Public Functionaries art. 23, *supra* note 46, at 3055.

And if a certain act of a public functionary is already in disciplinary procedure, the beginning of criminal procedure concerning the same act temporarily halts the disciplinary procedure until a final criminal judgment is pronounced.<sup>100</sup> However, if a ruling "not to prosecute" or a judgment of "exempt from prosecution" or "not guilty" is pronounced by the court concerning a certain act of a public functionary, disciplinary measures concerning the same act may be imposed independently.<sup>101</sup> Disciplinary action may also be taken against a public functionary for an act concerning which a judgment of "punishment remitted" has been pronounced or a judgment to serve sentence has been pronounced without depriving civil rights.<sup>102</sup>

The action of an ordinary court on a criminal charge will not affect the disciplinary organization's application of its own sanctions except that the disciplinary procedure may not begin or continue if the case is under trial or pending final decision in a criminal court. The independence of the disciplinary organization is insured, but its decisions will probably be affected by the prior decision of the court. Here the Chinese system again differs from the United States system in that the United States Senate upon conviction in an impeachment removes the official from office, and he may then be indicted and tried for the criminal offense.<sup>103</sup>

Another aspect of the relationship between the Control Yuan and ordinary courts is that all ranks of judicial officials, including judges and procurators from the supreme court down to district courts, are subject to the censorial power of the Control Yuan.<sup>104</sup> This is different from the Danish Ombudsman who has no control over court personnel,<sup>105</sup> but similar to the Swedish Ombudsman whose surveillance over the courts is an important role of the Office.<sup>106</sup> Therefore, for example, if a judge in handling a case is deemed by the Control Yuan as having been in violation of law, it may take action against him at any time, although the Control Yuan has no say at all about the substance of a court decision. However, in recent years there have been times when the Control Yuan has regarded a court decision as being the result of faulty handling, while the court has maintained that it was purely a matter of opinion of law. A striking example was the Control Yuan's impeachment in 1960 of

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100. Law for the Discipline of Public Functionaries art. 24, *supra* note 46, at 3055.

101. Law for the Discipline of Public Functionaries art. 25, *supra* note 46, at 3055.

102. *Ibid.*

103. U.S. CONST. art. I, § 3.

104. CONSTITUTION arts. 81, 99.

105. Christensen, *supra* note 98, at 1106.

106. Jägerskiöld, *supra* note 97, at 1094-95.

five supreme court judges on grounds of incriminating an innocent by intentional distortion of law, which though unsuccessful in imposing any disciplinary punishment on the five judges, actually caused a reversal of the court's decision.<sup>107</sup>

A word may be added here concerning the military courts. When a case of impeachment or censure is found to involve military criminal law rather than military discipline, it must be referred for trial to a competent military court by the Control Yuan.<sup>108</sup>

#### *B. The Control Yuan and the Administrative Court*

The Chinese legal system has a separate court for the adjudication of administrative suits.<sup>109</sup> Though basically patterned after the European system found in France and Germany, the Chinese Administrative Court varies from its archetypes in that it, being a component part of the Judicial Yuan, is more judicatory. This is evidenced by the structure of the court. Headed by a President, the Administrative Court has several divisions, each composed of five judges, of whom two must previously have sat on the bench of an ordinary court.<sup>110</sup> Access to the Administrative Court is only gained after exhaustion of administrative remedies. Any person, on the ground that his rights or interests have been injured by an unlawful or improper administrative measure on the part of a central or local government agency, first files an administrative appeal with a competent organ of a higher administrative level. If he disagrees with the decision, he then files an administrative re-appeal with a competent organ of an even higher administrative level.<sup>111</sup> In the case in which an individual's rights rather than his interests have been injured by an unlawful rather than an improper administrative measure, if no decision concerning the re-appeal has been given within three months or the decision given does not satisfy him, the individual may institute administrative proceedings at the Administrative Court.<sup>112</sup> A supplementary action may also be brought for compensatory damages.<sup>113</sup> The judgment of the Administrative Court, which is final and subject to no appeal, may (1) revoke or change the original ad-

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107. For a detailed account of the case, see TSUNG TUNG FU KUNG PAO [GAZETTE OF PRESIDENTIAL OFFICE No. 1208, March 10, of the 50th year of the Republic of China (1961)], which contains the Decision of the Discipline Committee on the case with related documents.

108. Control Law arts. 15, 19.

109. Organic Law of the Administrative Court art. 1, COLLECTION 2857 (1945).

110. Organic Law of the Administrative Court arts. 2, 3, 4, *supra* note 108, at 2857.

111. Law of Administrative Appeal arts. 1, 2, COLLECTION 3054 (1941).

112. Law of Administrative Proceedings art. 1, *supra* note 112, at 3054.

113. Law of Administrative Proceedings art. 2, *supra* note 112, at 3054.

ministrative measure or decision or (2) dismiss the proceedings as groundless.<sup>114</sup>

If the Control Yuan deems a particular administrative measure of a government agency unlawful or improper, it can take action against the officials concerned on its own initiative even if the individual affected by the measure has not filed an appeal or a re-appeal or instituted administrative proceedings. As long as the complaint of an individual is against the faulty handling of his business on the part of the personnel of a government agency and not the substance of the agency's decision, the Control Yuan may also act without waiting for exhaustion of administrative remedies or a judgment of the Administrative Court.

Finally, as the judges of the Administrative Court themselves, like the judges of ordinary courts, are also under the censorial power of the Control Yuan, what is true of the relationship between the Control Yuan and the ordinary courts in this respect is equally true of that between the Control Yuan and the Administrative Court.

#### VI. POLITICAL AND OTHER QUESTIONS

The establishment of an independent Control Yuan is primarily to free control officials from becoming involved in political strife, a phenomenon quite common in Western parliamentary systems. However, inasmuch as the Control Yuan is composed of members chosen by election and there in fact exist besides the dominating Nationalist Party (Kuomintang), two other political parties, viz.: the Democratic Socialist Party and the Youth Party, each having its own members in the Control Yuan as well as in the Government, it may well be asked whether the Control Yuan also gets itself involved in party quarrels and other political conflicts.

As far as disputes between parties are concerned, they have not presented any problem to the Control Yuan. Because the percentage of membership of the two minority parties in the Control Yuan and the government is very low, there is little or no need for the majority party to use the power of control as a political weapon against the minority parties. On the other hand, there is little or no possibility for the minority parties to do the same against the majority party.

To the extent that the Control Yuan has become involved in political conflicts, these have been disputes between the Control Yuan and other government organizations over the exercise of the former's powers. A good example may be found in the Control Yuan's impeachment of O.K. Yui, one-time President of the Executive Yuan.<sup>115</sup> The impeachment was brought about as a result of Yui's repeated re-

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114. Law of Administrative Proceedings arts. 3, 23, *supra* note 112, at 3054.

115. *Decision of Committee on Discipline of Public Functionaries*, *supra* note 82.



fusal to appear before the Control Yuan to answer questions concerning an earlier corrective measure directed against the Executive Yuan.<sup>116</sup> Personal enmity may have been involved, but the genuine problem was whether the Control Yuan has the power to summon the President of the Executive Yuan for questioning, or whether the President of the Executive Yuan has the duty or responsibility to be personally present at the Control Yuan's meeting to answer its questions.<sup>117</sup> As far as the letter of the Chinese Constitution is concerned, the Executive Yuan is only responsible to the Legislative Yuan in that the President of the Executive Yuan has the duty not only to present to the Legislative Yuan a statement of its administrative policies and a report of its administration, but also to answer interpellation and questioning while the Legislative Yuan is in session.<sup>118</sup> Nothing, however, is said in the Constitution about the relationship between the Executive Yuan and the Control Yuan.

Another example of interest was the Control Yuan's battle with the Legislative Yuan over the right of representation to the Inter-parliamentary Union. It started with the Inter-parliamentary Union's invitation to the Legislative Yuan several years ago, asking the latter to participate in the organization. Upon hearing of this, the Control Yuan put in the claim that judging from the fact that the Control Yuan's members are elected and that its powers consist of those of consent, impeachment and auditing, it bears similarities to the upper house of a Western parliament, particularly to the Senate of the United States Congress, and therefore should join the Legislative Yuan in representing China in the Inter-parliamentary Union. When the Legislative Yuan refused to join forces, the relationship between the two Yuan became very tense. The conflict was further complicated when the National Assembly cut in and claimed that being an elected body for exercising the political powers on behalf of the people of the whole nation, it also is a component part of a "Chinese Parliament." The issue was finally settled by an interpretation of the Judicial Yuan's Council of Grand Justices, which ruled that the National As-

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116. The Control Yuan was further enraged when Yui rejected the former's investigation of certain documents of the Central Bank of which he was concurrently governor.

117. In fact, to meet the Control Yuan's claim that its power of investigation may demand any official including the President of the Executive Yuan to be at a designated place including the Control Yuan itself for questioning, Yui used as his final weapon the nonexistence of his constitutional duty to appear before a Control Yuan meeting to answer questions concerning the administration of the Executive Yuan. See Yui's written defense contained in *Decision of Committee on Discipline of Public Functionaries*, *supra* note 82.

118. CONSTITUTION art. 57.

sembly, the Legislative Yuan and the Control Yuan jointly are equivalent to the Parliament or Congress of Western democracies.<sup>119</sup>

Disputes of the above kinds have their basic causes. The permanent Constitution of China adopted in 1947, when there was urgent need of quieting down the political commotion in the country, falls short to no small extent of Dr. Sun Yat-sen's well-systematized constitutional theory. As a result, the Chinese Central Government structure which would have been novel and complicated enough if wholly based on Dr. Sun's theory, becomes even more intricate as embodied in the present Constitution. This is reflected in the fact that the relations among the five Yuan and the spheres for the exercise of their respective powers are in many places left undefined, thus giving rise to controversies. It is believed that if more time and full opportunity be given, a satisfactory practical relationship among the various departments of the Central Government will be worked out.

## VII. CONCLUSION

In the governmental system based upon the political doctrine of separation of five powers, the Chinese Control Yuan is a Central Government organization entrusted with the power of control which it can exercise independently and exclusively. As a system of control over government it is unique in many respects. However, it is not impossible to make some kind of a comparison between the Chinese Control Yuan and Western systems. The Control Yuan bears some resemblance in structure and powers to the upper house of a Western parliament. The Control Yuan in fighting for the right of representation to the Inter-parliamentary Union several years ago used this comparison to support its claims.<sup>120</sup>

However, a closer examination of the Control Yuan's major functions and powers as well as the procedure for exercising them reveals distinctive characteristics. The Control Yuan's functions and powers are very extensive. Not only can it impeach or censure all ranks of government personnel in the civil and military services, but it can also propose corrections for administrative measures which it deems unlawful or inappropriate. Corrective proposals are not limited to particular government actions, but may be directed towards government policies. The Control Yuan may even suggest positive actions in matters which have, in its opinion, escaped the attention of the government.<sup>121</sup> The Control Yuan's power of investigation as a necessary correlate to the powers of impeachment, censure and proposal of

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119. *Interpretation of Council of Grand Justices*, SHIH TZE No. 76 and appended documents.

120. *Ibid.*

121. For instance, the Control Yuan recently passed resolutions requesting

corrective measures is very broad. All public records except those concerning national defense and diplomatic secrets are subject to its inspection, and all government personnel concerned are subject to its questioning. Many cases of impeachment and censure originate in written complaints from private citizens, but investigations started on the Control Yuan's own initiative have also been important.

The Control Yuan can file an impeachment or a censure against a public functionary, but it cannot conduct a trial or apply any sanction. The right to try belongs either to the National Assembly or the Committee on the Discipline of Public Functionaries or a competent military office as the case may be. The sanctions applied, though based on different laws, are restricted to disciplinary measures. If the case involves a criminal offense, it is referred to a competent court for trial and judgment. The Chinese Control Yuan differs from Western parliamentary systems, in general, but may be likened to the Scandinavian Ombudsman in that both the Chinese Control Yuan and the Scandinavian Ombudsman enjoy no power to apply any sanction directly.<sup>122</sup> All they can do is to resort to a court for criminal proceedings or to a competent organization for disciplinary action. However, to the present writer the Scandinavian and Chinese offices seem to differ from each other in this connection, both in principle and in practice. According to the literature available, the Scandinavian Ombudsman, Swedish or Danish, regards as his normal sanction the expression of his condemnatory opinions or "his view of the case,"<sup>123</sup> while the Chinese Control Yuan aims at subjecting the public functionary at fault to criminal prosecution or disciplinary measure.

The Control Yuan in exercising its constitutional powers in the past fifteen odd years has not been free from criticism. Generally speaking, however, it has performed its duties conscientiously as the highest watchdog organ of the state. When the relationship of its powers and functions to other organs of government has been clarified, the Control Yuan can contribute further to the realization of a clean and efficient government.

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the government to revive the New Life Movement, once very popular in the 1930's, as an effective means of stopping the suspected increase in cases of violence in the society. Central Daily News (Taipei), Oct. 28, 1962. The Danish Ombudsman seems to practice a similar function in that he often makes recommendations which he deems useful to promote law and order. See Christensen, *supra* note 98, at 1115-16.

122. Neither the Swedish nor Danish Ombudsman can directly give the complainant a remedy or impose a penalty on the government agent found guilty. Jägerskiöld, *supra* note 97, at 1089; Christensen, *supra* note 98, at 1114.

123. Jägerskiöld, *supra* note 97, at 1085; Christensen, *supra* note 98, at 1115.