

The Independence of an Independent Agency and Its Legislative Supervision

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Abstract

Controversies are aroused constantly over the operation of independent agencies, even after the legislation of Basic Code Governing Central Administrative Agencies Organizations and Organizational Act of the Executive Yuan. This essay is going to clarify the essence of “independence” of an independent agency, and further analyze its optimal modes of governance, where legislative supervision plays an important role. I argue that the independence of an independent agency lies better in the distance created from the highest executive chief officer, rather than its expertise or independence from politics. On this basis, an independent agency is characterized by its “functional independence,” “outer independence,” and “adjudicational independence.” Relatively, the degrees of an independent agency’s “organizational independence,” “inner independence,” and “general policy-making independence” are hinged on legislative discretion. Independent agencies with respective missions may have different combinations of independence-related factors in their institutional designs.

There are two main categories of legislative supervisions, organizational and procedural, over independent agencies. Most legislations of independent agencies focus on the organizational aspects. They share similar institutional designs and legitimate issues as well. Taking the practices of Taiwanese independent agencies as examples, although the organizational acts of Central Election Commission, Fair Trade Commission, and National Communications Commission all establish rules regarding commissioners’ positive qualifications, staggered terms, and bipartisan requirements, they do not bring the spirit of

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independence into the application of above terms. Besides, appointment and confirmation procedural rules of above commissioners are far from complete. On the other hand, Judicial Interpretation No. 613 drew our attention to the importance of procedural aspects of legislative supervision. It has been hard to expect an independent agency not to do any general case level policy making. I argue that, asking independent agencies to negotiate with relevant administrative agencies before decision-making, or even leaving certain final policy making power to Executive Yuan, and setting compulsory interfering factors disclosure rules by legislation would be a worth considering institutional design in future legislations.

Keywords: independent agency, legislative supervision, separation of powers, administrative unity, politics of accountability, staggered terms, bipartisan requirements, information disclosure