

修憲後我國監察制度與芬蘭國會監察使制度之比較分析

摘要

監察制度 (control system) 是民主體制中重要的監督機制，主要的功能是監督行政和保障人權，隨著第三波民主化的發展，從一九八〇年代開始，監察使制度 (ombudsman system) 快速擴散至全世界，形成一股「監察風潮」

(Ombudsmania)。在民主國家中，我國與芬蘭都是實施監察制度較悠久的國家，僅次於瑞典。無獨有偶，兩國都在一九九〇年至二〇〇〇年進行一連串的憲政改革，修憲後我國政府體制從修正式的內閣制 (Parliamentarism) 轉變為半總統制 (Semi-Presidentialism)，而芬蘭則從典型的半總統制傾向議會內閣制。同時在憲政改革的過程中，兩國的監察制度也都有許多的變革。

本文是從權力分立原則 (Doctrine of Separation of Powers)、有限政府 (Limited Government) 和第四權 (The Fourth Branch of Power) 概念等監察理論作為法理基礎，並以法制研究途徑 (Legal-Institutional Approach) 和新制度主義 (New Institutionalism) 作為分析架構，從靜態的法制層面和動態的運作層面，探討我國的監察制度和芬蘭的國會監察使制度，以及兩國在二〇〇〇年憲政改革之後的運作情況，以瞭解兩國制度之特色及優劣，並且針對中、芬兩國基本國情、監察制度的基本差異、制度與制度變遷、實務運作與案件、實施成效等幾個面向來作分析比較，剖析其間之異同及其原因。

再者，本文也根據國際性比較與芬蘭國會監察使制度之優點和成功經驗，歸納出監察制度實施成功之條件，包括：(一) 監察使「權威」(authority) 的建立。(二) 具備獨立性、中立性和專業性的特性。(三) 健全的國家廉政體系。(四) 國會的支持與配合。(五) 政治人物對監察使和監察制度的尊重。(六) 監察使與外界建立良好的互動關係。並進一步評估我國現行監察制度之問題，主要有下列幾項：(一) 形式獨立但實質獨立性不足。(二) 監察院的權威未建立。(三) 部分監委人選不適任。(四) 監察院的功能有待提升。(五) 缺乏行銷以及與外界互動不足。

最後，筆者針對以上缺失，分別從監察院的定位、組織規模、監委選任、特殊監察使的設立、監察院的職權、監察院的預算、人權保障、與外界互動、對監委的監督等幾個面向，提出具體改革之建議。

關鍵字：監察權、監察使、監察院、國會、半總統制、芬蘭、權力分立、有限政府、第四權

A Comparison of the ROC's Control System and the Parliamentary Ombudsman in Finland ---A Post-Constitutional Reform Study

Abstract

The control system is an important mechanism in democracy to supervise administration and to protect human rights. Since 1980, with the development of the third wave democratization, the ombudsman system rapidly disseminate to all parts of world, forming the phenomenon of "Ombudsmania". Among the democratic countries, the control system has been carried out for long in both ROC and Finland, only shorter than Sweden Coincidentally, both countries underwent a series of constitutional reform during 1990 to 2000. Thereafter, ROC transformed from the revised Parliamentarism to the Semi-Presidentialism, while Finland turned from the classical Semi-Presidentialism to the parliamentarism. The control systems of both countries have also changed a lot during the constitutional reform.

Based on the control theories including concepts of Doctrine of Separation of Powers, Limited Government, and The Fourth Branch of Power as the legal basis, this article utilized the Legal-Institutional Approach and the analysis constructs of New Institutionalism to explore the ROC's control system and parliamentary ombudsman system of Finland, as well as their operation after the post-constitutional reform in 2000, from the static legislative level and the dynamic operational level. This provided understanding of the characteristics and evaluations of the systems in both countries. Moreover, we focused on the aspects of the essential differences in cultures and in the control systems, the evolution of the systems, the functioning, the cases, and their outcomes to analyze the reasons for the differences between the two systems.

Furthermore, based on the international comparison and the success experience in parliamentary ombudsman of Finland, the conditions required for successful practice of the control system was involved: (1) establishment of the authority of the ombudsman, (2) the independent, neutral, and professional characteristics, (3) The national integrity system, (4) the support and cooperation of the parliament, (5) The respect of the politicians to the ombudsman and to the control system, and (6) The well-established interaction between the ombudsman and the outside. Further evaluation found the major problems in the present control system in ROC, including (1) lack of the substantial independence, (2) not established authority, (3) the incapability of some Control Yuan members, (4) the necessity to improve the

functions of the Control Yuan, (5) the deficiency of marketing and of interaction with the outside.

Finally, for the weakness mentioned above, I proposed the concrete recommendation for reformation, from the aspects of the position of the Control Yuan, the dimension of the organization, the election of the committee members, the establishment of specific Ombudsman, the powers and the budgets for the Control Yuan, the protection of human rights, the interactions with the outside, and the administrations of the committee members.

Keywords: Control Power, Ombudsman, Control Yuan, Parliament,
Semi-Presidentialism, Finland, Separation of Powers,
Limited Government, The Fourth Branch of Power