

Pardon for Chen, peace for Taiwan

Written by Hsu Wun-pin 許文彬

Wednesday, 27 September 2017 06:46

The pan-green political camp has been on tenterhooks over whether former president Chen Shui-bian (陳水扁), who is on medical parole after serving six years of a 20-year sentence for corruption, should be granted amnesty.

A motion in favor of amnesty was on the agenda of Sunday's Democratic Progressive Party (DPP) National Congress, but was not addressed after the congress lost its quorum.

Judging by the government's response to the proposal, President Tsai Ing-wen (蔡英文) is in a quandary. Granting Chen amnesty would not contravene the principles of the legal system, so the proposal merits a positive response.

As defined by Article 3 of the Amnesty Act (大赦法), there are two kinds of amnesty. The first involves exempting an offender from execution of a punishment, while the second involves declaring the punishment to be invalid.

The former is the rule and the latter is the exception, and its use is limited to exceptional circumstances, as stated in the Article 3.

In Chen's case, the first type of amnesty would be applied. It would only exempt him from serving the remainder of his time in jail, rather than retracting the original sentence.

Out of consideration for Chen's health, and based on the preferential treatment given to former presidents, it would be a matter of declaring that his sentence would not be carried out, while his offense would remain. This would demonstrate Tsai's respect for the judiciary.

As to other cases involving Chen that are under trial, does the law still allow him to be pardoned?

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The answer is probably “yes,” and this is a well-established interpretation in the field of constitutional law, because amnesty is specific in that it entails exemption from the execution of punishment for specific offenders and in specific cases.

As for the fait accompli of the final guilty verdict, it would not be affected by a pardon, as stated in Article 5-1 of the Amnesty Act.

If Chen is granted pardon, it will only be in relation to the case in which a final verdict has been reached and would not affect cases on trial.

Amnesty could be granted immediately without having to amend existing laws.

A pardon for Chen would not have to touch political raw nerves. There is no need for him to first apologize to the public, as some commentators have suggested, nor is there any need to worry about the verdict being interpreted as political repression.

The only political question is whether this is a case of giving preferential treatment to a former president.

However, this can be considered in the light of legislation concerning deferential treatment, so it does not contravene the nation’s legal system.

Chen was granted medical parole when the Chinese Nationalist Party (KMT) was in government, so now that the DPP is in government, it would not be unreasonable for Tsai to pardon Chen.

Furthermore, if Chen were to regain his health while on parole, then according to law, he must return to jail to continue serving his sentence.

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In that case, as a sick person who is partway through a prison sentence, he would find himself in a dilemma. If his illness is cured, he must go back to prison, so would it be better for him not to be cured?

To place someone in such a quandary is inhumane and all the more unacceptable for a sick inmate with the status of a former president.

If he were to be given an amnesty that exempts him from execution of his punishment, it would be fitting in terms of compassion and legal principle.

If Tsai announces such an amnesty for Chen, it would be acceptable to pan-blue and pan-green political camps, so it would not sharpen social confrontation. Considering that there is a legal basis for affording preferential treatment to former presidents, it could promote social harmony.

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Translated by Julian Clegg

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