

Court's cowardice harms rights of all in Taiwan

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The Council of Grand Justices displayed a tragic lack of judicial independence and courage Friday by failing to take a clear stand on the validity of the court proceedings which resulted in a conviction and life sentence meted to former president Chen Shui-bian on "corruption" charges by the Taipei District Court last month.

In their role as Taiwan's Constitutional Court, the 15 grand justices issued Interpretation 665 in response to a petition filed in January by the former president's legal defense team on several issues.

The prime issues included the constitutionality and legality of the controversial transfer of responsibility for the Chen cases last December from the original presiding justice Taipei District Court Justice Chou Chan-chun, immediately after Chou released the former president on bail, to Justice Tsai Shou-hsun.

Tsai promptly ordered Chen's detention, which has now lasted for nearly a full year, on grounds that the former president was accused (even if not yet found guilty) of a "major crime," and proceeded to preside over a virtual kangaroo court which ended in predictable guilty verdicts.

After nine months of deliberation and with four judges issuing dissenting opinions, the council avoided a judgement on the particulars of the switch in judges or the Chen's detention in a decision reflected more the proverbial habits of ostriches than the democratic legal judicial principles.

For example, regarding the switch in judges in the Chen state affairs funds and other cases, the Grand Justices upheld the principle of determination of judges through legally-defined processes and stated that the Taipei District Court's regulations on the assignment of judges was drafted under the authorization of its court organic law and the decision of its council of presiding judges.

'Abstract' and unreal justice

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The interpretation also affirmed the required method of selection through "abstract" methods, such as random selection by lot, as both rational and necessary and therefore ruled that the regulated procedures were "constitutional" and "protected judicial human rights."

However, the interpretation appeared to notice only the written regulations in the "abstract" and turned a blind eye to the very "concrete" trampling of these rules by the Taipei District Court itself.

The interpretation was silent on the fact that the decision to replace Chou, who had been selected by lot, with Tsai was made by only five of the 18 Taipei District Court presiding judges and transgressed the regulations's principles of not reassigning a specialised case to a general judge or combining a big case into a small case.

The Grand Justices thereby ignored the "concrete" reality that the fact that the rule book was not followed in Chen's case led to cries of over "administrative interference."

Regarding Tsai's decision to detain Chen on the grounds that he was accused of a "major crime" of corruption, the justices adopted a progressive stand in the "abstract" by declaring that a defendant could not be detained on the sole grounds that he or she was charged with a major crime.

The interpretation ruled that a decision to detain a person under investigation or trial needed to be supported by other important factors, as defined in Article 101 Section 1 of the Code of Criminal Procedures, such as whether there is compelling evidence or reason to believe that the suspect is likely to flee, collaborate or pressure witnesses or destroy evidence.

Nevertheless, the decision of the Grand Justices not to find Chen's detention "unconstitutional" similarly neglected the concrete manner in which Tsai initially did justify the detention of the former president solely on the grounds that he was accused of a "major crime" and the sieve-like nature of claims by Special Investigative Unit prosecutors on how Chen could flee while under 24-hour "protection" by security guards or "destroy evidence" in an already completed investigation.

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The third problem concerns the fact that Interpretation 665 was released only after the conclusion of the first trial despite the fact that a majority of Grand Justices objected early to the actions by the Taipei District Court as "concrete" violations of the principle of the legal determination of judges.

A prompt issuance of an interpretation before the completion of the first trial could have resulted in a mistrial and the resumption of court hearings under Judge Chou Chan-chun, a specialist in financial crime.

Undoubtedly, a far more massive earthquake would have been triggered if the Constitutional Court had decreed Friday that Judge Tsai Shou-hsun's assignment was "unconstitutional" and thus invalidated his guilty verdicts and draconian sentences.

However, the decision by the Grand Justices to delay an urgently needed interpretation and then to fail to display the courage to accept the greater cost of belated justice will only increase the harm done to Taiwan's democracy and rule of law, the human rights of all Taiwan citizens and the credibility of the judicial system itself by allowing an obvious violation of procedural justice and judicial human rights to continue without "concrete" or principled challenge.

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