

Prosecutor-general has abused his position

Written by Wu Ching-chin 吳景欽

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Prosecutor-General Huang Shih-ming (黃世明) has revealed further details of his role in the affair concerning alleged improper lobbying by Legislative Speaker Wang Jin-pyng (王金平), saying that he met with President Ma Ying-jeou (馬英九) twice to report on the case. He had no legal basis for reporting directly to Ma, and in so doing, he departed from the impartial and independent stance that the prosecutor-general should maintain.

Although prosecutors' offices are subordinate to the Ministry of Justice, the minister of justice only has the power of administrative oversight over the prosecutorial system and has no jurisdiction over specific cases. Article 63, Paragraph 1 of the Organic Act of Courts (法院組織法) stipulates that the prosecutor-general has authority over all the prosecutors' offices, and based on Article 64 of the same law and the principle of unity of prosecution, has the power to personally handle individual prosecutors' cases or transfer a case to be investigated by another prosecutor.

This also means that the prosecutor-general has the supreme power of direction over the prosecution of crimes. It is clear how much power the prosecutor-general wields when one takes into account that the Supreme Prosecutors' Office Special Investigation Division (SID), which was established to combat corruption among high-ranking civil servants, falls under the direct control of the prosecutor-general.

In view of the great power enjoyed by the prosecutor-general, when the legislature amended the Organic Act of Courts in 2006, it added a regulation in Article 66, Paragraph 8, stipulating that the prosecutor-general is to be nominated by the president and approved by the legislature, and that they can only serve a four-year term and cannot serve consecutive terms.

This measure was introduced to restrain the power of the prosecutor-general and ensure the independent exercise of the power of prosecution.

Once in office, a prosecutor-general does not have to take orders from the president or the legislature with regard to the investigation and prosecution of crimes. This means that the prosecutor-general is not answerable to any superior official, and is only obliged to strictly abide by the law in exercising their powers.

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In the current case that has aroused so much controversy, the SID started out by investigating corruption among judges, then branched out into investigating other cases that came to light in connection with the original case.

The SID started tapping an increasing number of people's telephone lines, and even threatened the prosecutors handling certain cases. In failing to prevent the SID from abusing its powers in this way, Huang, as the nation's top prosecution official, has failed in his duty to carry out appropriate oversight.

Even more questionable was his decision to report information about the investigation, which is supposed to be kept secret, to Ma.

This is a serious violation of the impartiality of the judicial system, and has given people the impression that the prosecution is serving political ends.

The prosecutor-general is supposed to maintain strict independence and impartiality, but Huang's performance in relation to the suspected improper lobbying has strayed a long way from these principles and throws his legal expertise into doubt.

Considering the revelations of unlawful actions on his part, Huang should know what his next step should be. The proper thing for him to do now would be to resign and accept a judicial investigation into his actions.

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Translated by Julian Clegg

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