

Tyranny undermining rule of law

Written by Lai Chung-chiang 賴清江
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The Agreement on Jointly Cracking Down on Crime and Mutual Legal Assistance Across the Strait (海峽交流基礎設施協議) was signed by the Straits Exchange Foundation and China's Association for Relations Across the Taiwan Straits on Apr. 6, 2009.

Later that month, on Apr. 30, it was decided at a meeting of the Cabinet that this pact did not involve making any amendments to the nation's laws, so all the executive branch had to do was send it to the legislature and put it on record for future reference.

On June 10 of that year, the legislature's Internal Administration Committee and four other internal legislative committees held a meeting.

At the joint session, 17 opposition legislators made the case that since the agreement on cross-strait judicial cooperation involves the rights of Taiwanese, the relevant legislative procedures must be completed so the content of the agreement could be carried out in accordance with domestic law.

Chinese Nationalist Party (KMT) Legislator Chang Ching-chung (張景堂) headed the joint meeting, but did not dare to put the issue to a vote, which this is why he made the decision to handle it a later date. Since then, the agreement on cross-strait mutual legal assistance is still high on the Internal Administration Committee's to-do list, the legislature has not passed it, nor has it agreed that the pact will automatically pass review if it is not processed after three months.

However, President Ma Ying-jeou's (馬英九) government, in its typical obstinate manner, has nevertheless notified China that the pact has come into effect.

What sort of impact will this kind of administrative tyranny have on Taiwanese? Perhaps the best example of the potential effects is a criminal case involving two brothers who may be facing the death penalty: Tu Ming-lang (涂明良) and Tu Ming-hsiung (涂明雄).

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In legal cases, witness testimony seriously affects how a judge interprets the event that transpired and because of this, the Criminal Procedure Act (刑訴法) stipulates that a defendant in a criminal trial has the right to examine a witness. Judicial Interpretation No. 582 states: “Article 16 of the Constitution guarantees the people’s right to sue. As far as a criminal defendant is concerned, such guarantee should also include his right to adequately defend himself in a legal action brought against him.”

The interpretation further states that: “A criminal defendant’s right to examine a witness is a corollary of such right, which is also protected by the due process of law concept embodied under Article 8-I of the Constitution, providing, among other things, that no person shall be tried and punished otherwise than by a court of law in accordance with the procedure prescribed by law.”

It concludes that: “In order to ensure the defendant’s right to examine any witness during a trial, a witness should appear in court and enter into recognizance in accordance with the statutory procedures. And, it is not until the witness is confronted and examined by the defendant that the witness’ statement may be used as a basis upon which decisions as to the defendant’s crime can be made.”

However, these provisions do not appear to apply in the case of the Tus, who were accused of burglary and murder in China.

The brothers were found guilty by the Tainan District Court in their first trial, but the Supreme Court then overturned the lower court’s ruling, citing important evidence it said proved the brothers were guilty.

This evidence was — shockingly — provided by testimonies taken by the Chinese Public Security Bureau and received through the agreement on cross-strait mutual legal assistance. What is worse is that the two defendants were neither able to take part in the testimony process nor examine any of the witnesses.

It is the duty of all civilized governments to protect a defendant’s right to a fair trial. The agreement on cross-strait mutual legal assistance has deprived the Tu brothers of their right to examine a witness, but all along, the Cabinet has claimed that all that needed to be done to

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ratify the agreement was to send it to the legislature and put it on record for future reference.

China's judicial system is harming the rights of action of Taiwanese citizens that the Constitution is supposed to protect.

In a ruling in the Tu brothers' case, the Supreme Court said that since 1996, the Criminal Procedure Law of the People's Republic of China has been amended significantly and that clear improvements have been made regarding fairness and the protection of human rights, so as a result, the Chinese criminal justice system is now to be trusted.

Chinese dissident artist Ai Weiwei (艾未未) and jailed Nobel laureate Liu Xiaobo (劉曉波) would without a doubt cry upon reading this ruling.

With the nation at a critical juncture, its rulers need to think long and hard about whether this ludicrous ruling will be carried out.

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Translated by Drew Cameron

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