

Military police search is a farce

Written by Taipei Times

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When some Taiwanese read news about members of a Hong Kong publishing house and related bookstore going “missing,” they might have snickered to themselves. After all, they live in a free society that observes human rights. However, when these same people discovered that military police had searched a private residence and confiscated “historical documents” obtained from the Internet, one can only presume the laughter stopped.

The Military Police Command was careful to point out that the whole process was aboveboard. The search was conducted only after the man in question, surnamed Wei (魏), had signed a right-to-search consent form, while officers were supervised and the entire process was filmed. Military police are a law enforcement body invested with judicial police powers, which is clearly stipulated in the Judicial Police Dispatching Act (司法警察派遣法), the Code of Criminal Procedure (刑事訴訟法) and the Code of Court Martial Procedure (軍法訴訟法). Nevertheless, these same laws also state that military police should obey and assist prosecutors and judges. Do military police really have the right to enter a private residence and conduct searches or confiscate evidence?

The command explained that Wei had signed a search consent form. Well, according to the Code of Criminal Procedure, both public prosecutors and police officers have the right to apply with a court for a search warrant. However, before they do so, police officers, including military police, must secure the approval of a public prosecutor before they submit an application. Only a judge has the right to issue a search warrant, which needs to bear a judge’s signature. Not even public prosecutors are able to conduct a search without having gone through these procedures. As such, the command was already in violation of the law when it executed the search solely on the basis of the consent form.

The ability to conduct searches involves a serious limitation of people’s basic rights, to the extent that they can even result in a violation of those rights. This being the case, courts — arbiters of who is allowed to conduct these searches — must be careful when they adjudge the necessity of a search request. So what if Wei had possession of White Terror-era files on military police investigations: Was it really necessary for authorities to search his residence to obtain evidence? The files in question dated to the 1960s and 1970s. Regardless of whether they actually were White Terror-era investigation files, according to the Classified National Security Information Protection Act (國防情報保護法), they had long ago passed the 30-year classification period.

Even if Wei was in possession of these files or documents and was suspected of concealing

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property or of “offences against privacy,” the command should still have first applied for permission from a judge to execute a search. And regardless of actual guilt, who on Earth would be willing to be searched? Wei was carted off and restrictions were placed on his freedom. To what extent did he actually give his consent? More laughable still, the Ministry of National Defense’s Political Warfare Bureau gave him an “award” of NT\$15,000, saying that was his consultancy fee, not “hush money.” Yeah, right.

This farcical turn of events reveals what the command and the ministry think about the judiciary and the rule of law, and how they remain trapped in the mindset of the totalitarian era.

Authorities, from the president and Cabinet to opposition legislators, should call on these officials to be dealt with. There is a high degree of consensus in the nation that this should be dealt with and that individuals involved should be punished, and the issue should be used as material for education about human rights and the rule of law. This is the only way the nation can ensure such a chain of events does not happen again.

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