

Control Yuan's dubious arguments

Written by Taipei Times Editorial
Thursday, 30 March 2017 00:52

While the legitimacy of the Control Yuan filing a request for a constitutional interpretation of the Act Governing the Handling of Ill-gotten Properties by Political Parties and Their Affiliate Organizations (黨產條例) is questionable, there are several questionable elements in its report on the constitutionality of the law.

The Control Yuan on Tuesday made public the report, which was the basis for its request for an interpretation by the Council of Grand Justices.

Democratic Progressive Party (DPP) lawmakers blasted the Control Yuan for overstepping the constitutional boundaries between government bodies. They said it is not within the Control Yuan's purview to file such a request and that it also has no say in the Executive Yuan following a law passed by the democratically elected legislature.

Those who came to the Control Yuan's defense countered by saying the fact that it had received a citizen's petition — which is undoubtedly one of its responsibilities — on the matter granted it the right to undertake the investigation and file the request.

However, what was left unmentioned was that the person who filed the petition was a Chinese Nationalist Party (KMT) worker.

Certainly a KMT employee is no less a citizen than any other Taiwanese, and the fact that the argument presented in the Control Yuan's report corresponds to the argument made in a request attempted by the KMT last year — unsuccessfully as it had an insufficient number of legislators supporting it — could also be charitably attributed to the body's paraphrasing of the petitioner's rhetoric, a lucky coincidence or a similar vein of logic.

However, a closer look at the Control Yuan's argument shows that it is ludicrous and contradictory.

Ludicrous in that in its attempt to justify the KMT's questionable assets it calls them — as New

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Power Party Chief Executive Huang Kuo-chang (黃國昌) has pointed out — “the product of changes to the Republic of China [ROC] Constitution and localization [in Taiwan].”

It is contradictory in that the Control Yuan calls the formation of the KMT's party-state “a loophole in the Constitution,” yet insists that as long as the ROC Constitution is enforced in Taiwan there should be no law (or committee) that exempts itself — alleged by the Control Yuan — from the application of the ordinary laws under the ROC Constitution.

What the argument amounts to saying is that there was an exceptional moment in the history of the enforcement of the Constitution, but what was done unconstitutionally cannot be redressed by what we have now.

Leaving aside the political intricacy of any attempt to amend the ROC Constitution (rather than adding more “Additional Articles”) due to the political implications that would carry, ie, redefining the political boundary of the ROC that still includes China, the Control Yuan totally missed the point of transitional justice and what “transitional” is about.

Political transformation and changes can lead to a dilemma over the rule of law and how past injustices can be dealt with and righted through a set of principles that are also in a state of transition.

In other countries that have gone through transitional justice periods this usually means a constitutional moment where new constitutions are founded or existing ones fundamentally overhauled.

It is therefore a bit crafty, if not downright deceitful, for the Control Yuan to invoke a constitution that a democratized Taiwan cannot change to justify the past authoritarian regime's deeds.

For many countries undertaking transitional justice, political compromises have to be made. In Taiwan's case, maneuvering — with a new democratic mandate — within the parameters of the inherited Constitution and making contextual interpretations will be its task.

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Source: [Taipei Times - Editorials 2017/03/30](#)