

Decisions on medical paroles not for jailors

Written by Wu Ching-chin 吳景欽
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On Friday last week, former president Chen Shui-bian (陳水扁), who served six years of a 20-year jail sentence for corruption, but is now on medical parole, attended a fundraising dinner.

At the event, he violated a ban on five kinds of activity that Taichung Prison imposed as conditions of his parole, and so is now at risk of having his parole revoked. This puts into question whether it should be correctional institutions that make the decisions about when to grant medical parole and when to revoke it.

Article 58, Paragraph 6 of the Prison Act (監獄法) stipulates that if a prisoner on parole for medical treatment disobeys parole conditions, the Ministry of Justice may revoke it. The same statute also authorizes prisons to set the conditions that parolees must obey and the conditions under which parole may be revoked.

The Ministry of Justice therefore promulgated the Regulations Governing Prisoners on Medical Parole (監獄行刑規則), which lays out specific rules.

Article 3, Paragraph 6 of the regulations stipulates that apart from activities essential for daily life and work, if parolees do not have permission from the prison, they are not allowed to engage in activities that are clearly unrelated to their treatment.

Article 4, Paragraph 1 states that if they break this rule, the prison may report them to the Ministry of Justice and request the ministry's approval to revoke medical parole.

In line with these regulations, Chen applied for permission from the prison to go to Taipei and attend the dinner, as he did last year. However, whereas last year Taichung Prison imposed conditions forbidding Chen to do three kinds of things, this year the number of banned activities increased to five.

This has caused people to wonder for what reason or because of what new information the prison had to impose more prohibitions on him this time.

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It also highlights a structural problem, namely that the terms of the Prison Act give the authorities broad powers that can easily lead to arbitrary decisions. It also exposes the often inadequate definition of legal norms governing Taiwan's enforcement of criminal law. This also violates the principle of legal reservation, which means that an administration is entitled to take action only if the law empowers it to do so.

The existence of such broad authority also puts the five bans imposed by Taichung Prison — that Chen was not permitted to go into the activity venue, take the stage, give speeches, talk about politics or give interviews to the media — in an extremely vague space that makes them open to a wide range of interpretations.

It allows the correctional institution to decide whether to cancel Chen's parole based on the reactions of pundits and popular sentiment, or even according to what the prison authorities think the government wants. It allows the authorities to grant or refuse leave for medical parole in a completely arbitrary manner and makes people wonder whether there is really such a thing as administrative neutrality.

The arrangements for deciding whether to grant, deny or cancel medical or other kinds of parole are not subject to any form of debate and they do not give the applicant any opportunity to take part in the procedure or express their opinions. This is completely incompatible with the safeguards of due legal process.

In addition, in view of Article 8 of the Republic of China Constitution, which says that restrictions on personal freedom may only be imposed by a court, a law that allows such penalties to be imposed by correctional institutions might be unconstitutional.

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Translated by Julian Clegg

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