

## Ruling raises questions of motive

Written by Ling Po-chih 林政之

Monday, 30 October 2017 17:39

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Former president Ma Ying-jeou (馬英九) has been acquitted of the two charges of leaking classified information and wiretapping in the final verdict in Democratic Progressive Party (DPP) caucus whip Ker Chien-ming's (柯建銘) lawsuit against Ma.

Although an appeal in another case filed by Ker at the Taipei District Court is still being handled by the Taiwan High Court, having encountered these judges, the future does not look too bright and the prosecutor's efforts might also end up being in vain.

When the Taipei District Court judge, in her ruling more than two months ago, interpreted Ma's release of classified information in terms of dealing with a constitutional controversy, she overstepped her authority by assuming that a president can release information about a dispute between the different branches of government that did not actually happen, and concluding that Ma's abuse of power was an exercise of his constitutionally granted powers and that it therefore was not illegal.

As soon as the not-guilty verdict was announced, it was ridiculed, but what is really worth exploring is the unknown motives behind the judge's decision to appeal to the Constitution.

The not-guilty verdict in Ker's private lawsuit against Ma avoids discussing the Constitution, but talks a lot about the governmental system: It begins by talking about how in Taiwan's system the president appoints the premier and discusses the appointment of the ministers and other staff with the premier, and therefore the premier is in effect the president's chief of staff — a point that is unlikely to be disputed.

However, it goes on to say that Ma "brought in" the premier to "deal with" the issue of whether illicit lobbying had actually taken place to resolve the political "storm" and maintain political stability, which it said was in line with the political situation in Taiwan in recent years, does not contradict the political system, and so on.

This is simply nonsense and so full of flaws that it is not even worth refuting.

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The word lobbying means expressing concern and trying to persuade, and as long as it has nothing to do with benefits or quid pro quo, there are no legal issues.

Even if two legislators were involved in the kind of lobbying that would lead to moral concerns, it should be dealt with only on the basis of facts as long as there is no evidence of any exchange of interests.

The pair might be criticized for violating their work ethic and setting a bad example, but it was still only a matter of concern for legislative self-discipline, which is beyond the authority of the Executive Yuan.

I have no idea why Ma, who lobbied for himself in connection to the special allowance case against him by asking legislators to put pressure on the prosecutor-general, was so angry and what he wanted to achieve.

Then-prosecutor-general Huang Shih-ming (黃世明) disclosed classified information to Ma, who then summoned then-premier Jiang Yi-huah (江宜樺) and then-Presidential Office deputy secretary-general Lo Chih-chiang (羅智強), who was not even supposed to be there, to discuss the issue. The next day Ma asked a member of his entourage to phone Huang, telling him to leak the classified information a second time.

All these shameful things took place behind closed doors, but at the time there was no political turbulence, so where on earth was the so-called “political storm” that required the president to “work with” the premier to “resolve?”

Even though he claimed to be a “big president,” Ma was not allowed to meet, nor should he have been, with the prosecutor-general in his private residence under any circumstance, whether based on the Constitution or the current political system, nor should he have interfered with ongoing investigations or tried to learn what those investigations had found.

The verdict says that Ma’s abuse of power was completely in line with Taiwan’s political situation and does not violate the political system.

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Is this verdict intended to deceive those who do not understand the Constitution and current affairs, or to protect Ma based on a hidden agenda?

The two verdicts extend the president's powers and encourage the president to interfere in the judicial system — such advantages and privileges go far beyond what is available to US President Donald Trump and Philippine President Rodrigo Duterte, who are both often blocked by the judiciary of their nations.

One can only speculate about whether President Tsai Ing-wen (蔡英文) wants to, or should, let this great opportunity go.

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Translated by Lin Lee-kai

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