

Is it a question of law, or of judges?

Written by Wu Ching-chin 吳景欽

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The legislature last week confirmed the new Control Yuan nominees, one of whom, Chen Shih-meng (陳希萌), during the nomination process pledged to “launch probes against those in the judiciary who selectively take up prosecution against pan-green camp politicians and government officials.”

Whether Chen has already demonstrated that he is unable to carry out his role as a member of the Control Yuan in a sufficiently objective and neutral manner will depend on the decisions and actions he takes in the coming months and years. He will certainly be scrutinized very closely.

As for Chen’s view that former president Chen Shui-bian (陳水扁) should have been acquitted of corruption charges, it is certainly true that this requires fresh examination.

When corruption allegations against Chen Shui-bian surfaced in 2008, officers from the Supreme Prosecutors’ Office Special Investigation Division (SID) went to great lengths to gather material against the former president, including sending prosecutors to Japan to piece together the balances of his overseas bank accounts.

While in Japan, prosecutors persuaded Chinatrust founder and former chairman Jeffrey Koo Jr (辜仲諒), who had fled to Japan after being found guilty of involvement in the so-called Red Fire case, to return to Taiwan to testify against Chen Shui-bian in exchange for a promise that they would not apply for an arrest warrant upon his return.

Prosecutors skillfully seduced Koo, who returned to Taiwan and admitted handling Red Fire deal bribe money for the family of Chen Shui-bian.

The evidence given by Koo was instrumental in convicting Chen Shui-bian in the Longtan Township (龍潭) land procurement money-laundering case.

Who would have thought that after Koo was handed a long prison sentence by the Taipei

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District Court for his involvement in the Red Fire case, he would in 2011 spill the beans about how he had returned to Taiwan to give evidence at the SID's bidding?

Many in Taiwan were astonished that the nation's highest investigatory and prosecutory body would resort to such tactics to secure a conviction.

Further, as per the Longtan case and whether it is possible to establish that Chen Shui-bian bribed civil servants, the crux of the issue is whether what took place was within the bounds of the office of the president.

Since July 1, 2006, criminal law in Taiwan has been governed by the principle that only people who are engaged in public affairs and who possess limited statutory powers can be legally defined as public officials.

Therefore, whether Chen Shui-bian's actions can be defined as official public business hinges upon whether he possessed the statutory authority to do so.

The statutory authority of the president is defined by the Constitution and as the Constitution stands, the delineation of powers between the president and the premier is a matter of dispute.

Despite seven successive revisions to the Constitution, the precise powers that the president holds is still unclear.

In the Longtan case, the High Court was only able to establish an approximation of the president's powers.

Whether land procurement in connection with the Hsinchu Science Park or taking bribes to facilitate a high-profile financial merger, or other related executive orders or measures, these generally all involve the invocation of executive powers.

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These cases were also closely bound up with the acceptance of political donations and High Court judges established that favors were granted in return for cash bribes.

The judges ruled that Chen Shui-bian used the “power of influence” which he possessed as president to accept bribes and kickbacks.

High Court judges have not yet used the substantial power of influence, which the former president tailored to his advantage during his term in office, as a test case for other corruption cases.

For instance, in 2013 former Executive Yuan secretary-general Lin Yi-shih (林錫山) was sentenced to seven years in prison by the Taipei District Court for accepting about NT\$60 million (US\$2.04 million at the current exchange rate) from a contractor.

Judges found that Lin had abused the executive powers bestowed by his office and had abused the substantial power of influence afforded by his position.

Furthermore, last year the High Court announced that it planned to use the “substantial power of influence” as a “standardized interpretation,” but in the end the plan came to nothing.

This demonstrates that the problem with Taiwan’s judiciary perhaps lies not with prosecutors or judges with alleged political leanings toward the pan-green or pan-blue camps, but instead with the willful and arbitrary decisionmaking of the judiciary.

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Translated by Edward Jones

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