

Spying penalties should be stricter

Written by Chao Hsuey-wen 蔡國文
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In the wake of several Chinese espionage cases in the past few years, legislators have urged the Ministry of Defense to reinstate military trials during peacetime to deter spying-related offenses.

Minister of National Defense Chiu Kuo-cheng (邱國正) has signaled his approval, saying military trials would not be problematic if they follow the right procedures.

With cross-strait tensions reaching new highs, several laws are already in place that stipulate penalties for treason, such as the Criminal Code of the Armed Forces (刑法), the National Intelligence Services Act (情資法) and the Classified National Security Information Protection Act (密示法). Defendants in espionage cases are usually charged with offenses defined by those laws, and when none of the above applies, with the National Security Act (國安法).

However, the biggest issue arises from Chinese traveling to Taiwan to recruit Taiwanese to spy on Beijing's behalf. When they are charged with developing a spy organization — an offense defined in the National Security Act — it is difficult to determine whether they accomplished that goal or just attempted to do so.

In 2015, the legislature amended the National Security Act after Chinese intelligence officer Zhen Xiaojiang (陳曉江), who recruited Taiwanese military personnel for a spy ring, was handed a penalty that was deemed too lenient. The considerable difference in penalties in Taiwan and China meant that a planned prisoner exchange failed, resulting in calls for stricter penalties.

The pre-2015 version of the National Security Act stipulated that defendants found guilty of setting up a spy ring be sentenced to imprisonment for “a term of not more than five years.” It also gave judges more room for interpretation regarding what constituted an offense under the act.

The amended act stipulates prison terms of “more than seven years” — which is not in line with penalties for other offenses. It also runs against the principle of culpability.

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In view of New Party member Wang Ping-chung (王平仲) and other suspected spies, judges in the first and second instance could have only found them guilty if their actions caused “obvious and immediate threat” to social stability and national security. As the legally prescribed punishment is relatively severe, judges might have concerns about adopting the National Security Act, as it restricts people’s freedom of association and speech.

The judges found it difficult to charge Wang and others, as their actions did not pose an “obvious and immediate threat” to national security.

However, their actions amounted to long-term infiltration, and there was a long-term threat despite there being no “obvious and immediate threat.”

Academics have proposed judging suspects from the stance of “anti-infiltration” and “safeguarding democracy,” as that would broaden the law’s applicability.

Based on the narrow definition of sedition, Taiwan should apply a broader and looser definition of “forming an organization.” It should also define what constitutes a contravention of legal interests, broaden liability criteria and increase penalties.

However, the better solution might be to allow judges to hand down penalties as severe or lenient as they see fit.

Since the death of army corporal Hung Chung-chiu (洪仲丘), military cases are handed to civilian courts for adjudication. As those courts still adopt the Criminal Code of the Armed Forces, the public should not be under the false impression that civilian courts hand down lighter penalties. It lies in the judges’ sense of national security.

When democratic countries are dealing with infiltration, the criteria should be “defending democracy,” not constricting the interpretation of what constitutes developing an organization, infiltration and espionage.

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Law students should be educated on concepts of national security and safeguarding democracy. For soldiers, the most basic values are loyalty to one's country, abiding by its constitution and defending democracy.

Those who commit treason should be given strict penalties to set an example for others.

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Translated by Rita Wang

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