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民主進步黨
Democratic Progressive Party, Taiwan

Response to the KMT's Commentary regarding the LY Controversy

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Since 2016, the DPP has implemented several parliamentary reform initiatives, including establishing a parliamentary channel and changing the model of "consult among political parties" by streaming the process live, etc. However, unlike the separation of powers of the three branches in the United States, the Constitution of the Republic of China stipulates five branches of government, with the Control Yuan granted the power of investigation. There has been a lack of consensus in Taiwanese society regarding the division of labor between the Legislative Yuan and the Control Yuan, and abolishing the Control Yuan would also require amending the Constitution.

Wellington Koo and Yu Mei-nu, whom the KMT claimed as the inspiration for their bills, initiated discussions about the investigation power in 2016. However, as professional lawyers, their proposals did not include provisions such as "Contempt of the LY" and other measures that could potentially jeopardize civil society and infringe upon individual rights. They also did not propose reestablishing the Special Investigation Division, which Ma Ying-jeou had used to wiretap members of the LY and to challenge the then-Speaker of the LY, Wang Jin-ping, in 2013.

The proposal put forward by the KMT contains several potential violations

of the Constitution. For instance, Interpretation 585 by the Constitutional Court of the Republic of China (Taiwan) in paragraph 25 emphasizes the importance of "granting adequate preparation time to the person(s) under investigation, allowing them to accept legal assistance, and providing reasonable grounds for rejecting investigation, testimony, and the provision of confidential documentation," etc. The Constitution and the Constitutional Court prioritize the rights of individuals under investigation, including adequate preparation time and legal assistance. However, in the versions passed by the KMT, aside from the requirement to notify the person under investigation five days before a designated investigation date, there are no provisions safeguarding the rights of the person under investigation.

Interpretation 585 by the Constitutional Court of the Republic of China (Taiwan) in paragraph 7 suggests that 'whenever a matter is related to the independent exercise of powers by an organ of the State that the Constitution guarantees, the Legislative Yuan may not extend its investigative power to such a matter.' Interpretation 585 also protects 'executive privileges' given by the Constitution, especially regarding defense and diplomacy.

However, in the KMT's proposal, the exercise of investigative power does not exclude independent agencies, and the related disputes involving "executive privileges" such as national defense and diplomacy are decided by the chairman of the LY committees themselves rather than being resolved by judicial authorities. This approach could also pose national security risks besides raising constitutional concerns.

To sum up, the KMT's proposal lacks safeguards for the rights of civilians and individuals under investigation, raising constitutional concerns. These are issues that require substantive discussion to clarify and rectify. However, after DPP legislators provided opening remarks and engaged in general discussion in committee meetings, they were effectively shut down during the clause-by-clause discussion. Moreover, initially, physical violence by the KMT prevented DPP legislators from entering the chamber to participate in meetings and voting, causing later escalation. The KMT's disregard for democratic procedures in pushing through legislation that lacks protections for people's rights is the fundamental reason why over 100,000 people participated in democratic protests around the LY.

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