
J.Y. Interpretation No. 627 (June 15, 2007)*

Presidential Immunity and Secret Privilege Case

Issue

Does presidential immunity, under Article 52 of the Constitution, prevent the president from being investigated in the president's own and/or others' criminal cases? Does the president enjoy state secret privilege although there is no statutory basis in the Constitution?

Holding

[1] I. Presidential Criminal Immunity

[2] Article 52 of the Constitution provides that, without being recalled or relieved of presidential role, the President shall not be liable to criminal prosecution, unless the president is prosecuted for rebellion or treason. The said provision is to respect and protect the President, as the Head of State, for commanding the military and assuming other important duties domestically, and representing the Republic of China externally. This Court has so held in J.Y. Interpretation No. 388.

[3] As J.Y. Interpretation No. 388 of this Court has explained, presidential immunity temporarily prevents the president from being prosecuted for crimes other than rebellion or treason; nevertheless, it does not prevent the application of the Criminal Code or other criminal punishment to the president so that the president would enjoy substantive immunity for crimes committed. Therefore, presidential immunity is a temporary procedural barrier. Accordingly, the phrase

* Translation by Wen-Yu CHIA, based upon the previous translation by Chung-Hsi Vincent KUAN

“not...liable to criminal prosecution,” as Article 52 of the Constitution provides, shall be so construed as to mean that the criminal investigation authorities and the trial courts may not treat the President as a suspect or defendant and proceed with any investigation, prosecution or trial against the President during the presidency for any criminal offense committed by the President other than rebellion or treason. By contrast, measures that do not directly concern the esteemed status of the presidency and the exercise of presidential authority, or that relate to immediate inspection and investigation of the crime scene, may still be undertaken.

[4] Presidential criminal immunity does not extend to the evidentiary investigation and preservation directed at the President for a criminal case involving other individuals. If such investigation or trial leads to suspicion that the President was involved in criminal offenses, pursuant to the intent of this Interpretation, necessary evidentiary preservation may be conducted, although no investigation or prosecution may be commenced against the President. Thus, considering Article 52 of the Constitution and its intention to protect the esteemed status of the presidency and the exercise of presidential authority, the President may not be physically restrained when measure or evidentiary preservation is conducted for cases that are not subject to presidential immunity. Detention or physical search, inspection or examination may be conducted only if it does not impede the normal exercise of the presidential authorities. The legislature should formulate additional provisions that govern the search of places concerning the President to make necessary arrest of a specific individual or seizure of a specific object or electronic record, as well as a special procedure of judicial review and objection for the President. Prior to the enactment of such legislation, the competent prosecutor shall file a motion for search and seizure regardless of whether the aforementioned place, object, or electronic record involves state secrets, unless the President’s consent is given. This motion should

be reviewed for its adequacy and necessity by a special tribunal at the High Court (or its branch) with five judges and presided over by a senior division chief judge. No search or seizure may be conducted without the special tribunal's affirmative ruling, and the search should not be conducted at the President's residence and working places as a matter of principle. The relevant provisions of the Code of Criminal Procedure shall apply *mutatis mutandis* to the procedure for filing an interim appeal.

[5] Nor does the presidential criminal immunity extend to his or her duty to testify as a witness in a criminal case involving another person. Nevertheless, in a criminal proceeding involving another individual as a defendant, Article 304 of the Code of Civil Procedure ("Where the witness is the Head of State, the examination shall be conducted at the place of his/her choosing") shall apply *mutatis mutandis* out of respect for the presidency, when the criminal investigation authority or the trial court lists the President as a witness.

[6] The presidential privilege or immunity from criminal prosecution is designed for the office of the President. Therefore, the President is the only person who enjoys such privilege, and an individual who serves as President may not waive the said privilege as a matter of principle.

[7] II. Presidential State Secrets Privilege

[8] Pursuant to the scope of presidential executive powers granted by the Constitution and the Additional Articles of the Constitution, the President has the power to decide not to disclose any information relating to national security, defense and diplomacy if the President believes that the disclosure of such information may jeopardize national security and national interests and hence should be classified as state secrets. Such power is known as the presidential state secrets privilege and should be given due respect by the other state organs if the exercise of their official authorities involves any such information.

[9] Based on the presidential state secrets privilege, the President should have the right to refuse to testify as to matters concerning state secrets during a criminal proceeding, and refuse to produce the relevant evidence to the extent that the President may refuse to so testify. The legislative should formulate additional provisions regarding the President in respect of the requisite elements and applicable procedures for the refusal to testify and refusal to produce relevant evidence. Prior to the enactment of such law, the President should provide a preliminary showing that the inquiry and statements relating to state secrets would fall within the scope of the presidential state secrets privilege, or that the production and submission of the relevant evidence would jeopardize national interests. If the preliminary showing fails to persuade, the competent prosecutor or trial court should consider the circumstances on an *ad hoc* basis and make a disposition or ruling in accordance with Article 134, Paragraph 2, Article 179, Paragraph 2 and Article 183, Paragraph 2 of the Code of Criminal Procedure. The President may raise an objection or interim appeal, pursuant to the intent of this Interpretation, if the President is not satisfied with the prosecutor's disposition or the trial court's disposition or ruling to overrule the President's refusal. The President's objection or appeal should be heard by the aforementioned special tribunal at the High Court (or its branch) by five judges and presided over by a senior division chief judge. Prior to the issuance of any ruling by the special tribunal, the enforcement of the original disposition or ruling should stand. The applicable provisions of the Code of Criminal Procedure should apply to the remainder of the objection or interim appeal proceedings. If the President provides the preliminary showing in writing, claiming that the relevant testimony or production of evidence would likely jeopardize national interests, the prosecutor and the court should defer to such claim. As to the determination of the likelihood that the President's testimony and production of relevant evidence in a confidential proceeding may jeopardize national interests,

only the prosecutor or trial judge may proceed with the review in a confidential proceeding. Even in the context of a confidential proceeding, when the prosecutor or the court uses the President's testimony or evidence that potentially jeopardizes national interests as a basis to justify the conclusion of the investigation or judgment, the President's testimony or evidence should be deemed as jeopardizing national interests.

[10] In determining whether the relevant provisions of the State Secrets Protection Act and the Regulation Governing the Court's Safeguarding of Secrets in Handling Cases Involving State Secrets should apply to the trial proceedings in any particular case where information already submitted by the President is involved, the trial court should consider whether the President has duly classified the relevant information and determined the classification period in accordance with Articles 2, 4, 11 and 12 of the State Secrets Protection Act. If the information is not classified as state secrets, the aforementioned confidential proceedings will not be applicable. Nevertheless, if, during the trial, the President reclassifies the information in question as state secrets, or provides other duly classified state secrets, the court should nonetheless continue the trial in accordance with the proceeding method mentioned above. As for proceedings already conducted, there should be no violation of the relevant provisions of the State Secrets Protection Act and the Regulation Governing the Court's Safeguarding of Secrets in Handling Cases Involving State Secrets. Meanwhile, in determining whether the testimony or evidence classified as state secrets by the President may jeopardize national interests, the aforementioned principles should be followed. Furthermore, the prosecution's investigative proceedings should also be conducted under the same principles.

[11] III. Preliminary Injunction

[12] It should be noted that it is no longer necessary to review the petition for

preliminary injunction in question since this Interpretation is rendered for the case at issue as a final decision.

Reasoning

[1] I. Presidential Criminal Immunity

[2] The exercise of the criminal judicial power is intended to fulfill criminal justice. The criminal prosecution immunity (or privilege) for the Head of State originated from the concept of a divine and inviolable kingship during the autocratic era. Modern democracies that observe rule of law have different rules regarding presidential criminal immunity, and its contents and scope have no direct relation with the type of the central government of the state. In other words, instead of a legal requirement of constitutional law, presidential criminal immunity is a matter of constitutional policy that may vary from one country to another.

[3] Known as the presidential criminal immunity, Article 52 of the Constitution provides that “The President shall not, without having been recalled, or having been relieved of his functions, be liable to criminal prosecution unless he is charged with having committed an act of rebellion or treason.” In a country that observes rule of law, the nature of presidential immunity is an exception to the principle of equal application of law that curbs the state’s power to administer criminal justice and thus grants the President the privilege not to be subject to criminal prosecution without having been recalled or having been relieved of his functions, unless the President is charged with having committed an act of rebellion or treason. This exception is a policy of constitutional design to provide respect and protection for the President, because of the President’s special status as the Head of State who commands the military and assumes other important duties domestically, and who represents the Republic of China externally.

[4] The first part of the holding of J.Y. Interpretation No. 388 of this Court as announced on October 27, 1995, reads, “Article 52 of the Constitution provides that the President shall not, without having been recalled, or having been relieved of his functions, be liable to criminal prosecution unless he is charged with having committed an act of rebellion or treason. The said provision is so formulated to provide respect and protection for the President because of the President’s special status as the Head of State who commands the military and assumes other important duties domestically, and who represents the Republic of China externally.” The first paragraph of the reasoning of said Interpretation reads, “Article 52 of the Constitution provides that the President, unless he is recalled or discharged, shall not be liable to any criminal prosecution except being charged with crimes in relation to rebellion or treason. This provision is so formulated in order to provide respect and protection for the President because of the President’s special status as the Head of State who commands the military, promulgates laws, appoints and discharges civil and military officers domestically, and who represents the Republic of China externally. This provision thus ensures that the President’s exercise of powers, political stability and the normal development of foreign relations may be maintained. The Presidential criminal immunity (or privilege), which excludes the President from criminal prosecution, nevertheless, is designed for the office of the President instead of the person, and it is not granted without limitation. If the President commits rebellion or treason, the President shall be subject to criminal prosecution; if the President commits a crime other than rebellion and treason, the prosecution for such crime is to be only temporarily withheld. The application of the Criminal Code or relevant laws which provide for criminal punishment is not permanently excluded.” The said Interpretation has already delivered a binding opinion on the purpose of Article 52 of the Constitution, the nature of presidential criminal immunity, the person to be protected, and the effects thereof.

Based on the intent of said interpretation, the President's immunity from criminal prosecution is a temporary procedural barrier, rather than a substantive immunity from any criminal liability of the President.

[5] The Constitution has been amended many times since October 27, 1995, with numerous changes of central government design, e.g., direct presidential election, the President's sole power to appoint the Premier, the abolition of the National Assembly, the Legislative Yuan's vote of no confidence against the Premier, the presidential power to dissolve the Legislative Yuan upon the latter's vote of no confidence against the Premier, and the legislative power to impeach the President and review by the Justices of the Judicial Yuan (Constitutional Court), etc. However, from the perspective of the current Constitution, the President still enjoys the powers enumerated in the Constitution and the Additional Articles of the Constitution, while the executive power is, in general, vested in the Executive Yuan in accordance with Article 53 of the Constitution; and the countersignature rule, provided by Article 37 of the Constitution, was only mildly modified. Moreover, as mentioned above, the scope of presidential criminal immunity does not necessarily correlate with the institutional design of the central government, while the nature of presidential criminal immunity remains unchanged, i.e. to curb the state's power to administer criminal justice and to provide respect and protection for the special status of the President. Accordingly, the construction of Article 52 of the Constitution need not be changed among the numerous constitutional amendments. Hence, J.Y. Interpretation No. 388 of this Court requires no modification.

[6] In light of J.Y. Interpretation No. 388 of this Court, presidential immunity from criminal prosecution is a temporary procedural barrier, rather than a substantive immunity from any criminal liability on the part of the President. Accordingly, the phrase "not...liable to criminal prosecution" provided by Article 52 of the Constitution shall be so construed as to mean that the criminal

investigation authorities and the trial courts may not treat the President as a suspect or defendant and proceed with any investigation, prosecution or trial against the President during the presidency for any criminal offense committed by the President other than rebellion or treason. Therefore, no criminal investigation or trial which involves the President as suspect or defendant shall begin after he or she takes office, if such investigation or trial has not been commenced prior to the inauguration. If such criminal investigation or trial has begun prior to the inauguration of the President and has treated the President as a suspect or defendant, it shall be suspended on the day of the inauguration. Nevertheless, since the President would be subject to such criminal prosecution should the President be recalled, relieved, or retired from the presidential role, measures that do not directly concern the esteemed status of the presidency and exercise of the presidential authorities, or that involve immediate inspection and investigation of a crime scene, may still be conducted by the criminal investigation authorities or the trial courts in a case where the President is considered as a suspect or defendant. Those measures include, for instance, that prosecutors may accept and register a case filed by criminal complaint, information, or transfer, and that courts may do the same for a file under private prosecution. If a criminal investigation or trial has begun prior to the inauguration of the President and has treated the President as a suspect or defendant, it shall be suspended on the inauguration day; if a criminal trial has begun prior to the inauguration of the President, a ruling to stay the trial should be made on the inauguration day. The suspended investigation or trial may resume its proceedings only after the President is recalled, relieved or retired from the presidential role.

[7] Presidential immunity is merely a procedural barrier that temporarily prevents criminal prosecution. When the President is suspected of having committed a crime, prosecution may still be conducted according to law should

the President be recalled, relieved or retired from the presidential role. Therefore, although criminal investigative authorities and trial courts may not treat the President as a suspect or defendant and proceed with any investigation, prosecution or trial against the President during the presidency for any criminal offense other than rebellion or treason, immediate inspection and investigation of a crime scene is not excluded by presidential immunity and thus may still be conducted. (*see* Article 230, Paragraph 3 and Article 231, Paragraph 3 of the Code of Criminal Procedure). Meanwhile, presidential immunity only refers to a temporarily curb on prosecution against the President's individual commission of a crime. Such immunity does not extend to the evidentiary investigation and preservation directed at the President during an investigation or trial of a criminal case involving another person. If such investigation or trial leads to suspicion that the President was involved in criminal offenses, pursuant to the intent of this Interpretation, necessary evidentiary preservation may be conducted in order to avoid any cover-up of evidence that would thus make the prosecution and trial against the President impossible after the President be recalled, relieved or retired from the presidential role, although no investigation or prosecution may be commenced against the President. Such evidentiary preservation may include, for instance, object or electronic records inspection, crime scene investigation, document and object review, and biological sample collection from persons other than the President. However, considering Article 52 of the Constitution and its intention to protect the esteemed status of the presidency and the exercise of the presidential authorities, the President may not be physically restrained when measures or evidentiary preservation is conducted. For instance, detention or physical search, inspection or examination may be conducted only if it does not impede the normal exercise of the presidential authorities. The Legislature should formulate additional provisions that govern the search of places concerning the President to make necessary arrest of specific individuals or

seizure of specific objects or electronic records, as well as a special procedures of judicial review and objection for the President. Prior to the enactment of such law, the competent prosecutor shall file a motion for search and seizure regardless of whether the aforementioned places, objects, or electronic records involve state secrets, unless the President's consent is given. This motion should be reviewed for its adequacy and necessity by a special tribunal at the High Court (or its branch) by five judges and presided over by a senior division chief judge. No search or seizure may be conducted without the special tribunal's affirmative ruling, and the search should in principle not be conducted at the President's residence and working places. The relevant provisions of the Code of Criminal Procedure shall apply *mutatis mutandis* to the procedure for filing an interim appeal.

[8] Since the President's duty to testify as a witness in a criminal case involving another person does not fall within the scope of "criminal prosecution" under Article 52 of the Constitution, it is not covered by presidential criminal immunity. Nevertheless, when the criminal investigation authorities or the trial courts consider the President as a witness in a criminal proceeding involving another individual as a defendant, Article 304 of the Code of Civil Procedure shall apply *mutatis mutandis* so as to show respect for the presidency. The said provision reads, "Where the witness is the Head of State, the examination shall be conducted at the place of his/her choosing." However, the President may waive this privilege by appearing and testifying before the court as a witness.

[9] In light of the intent of J. Y. Interpretation No. 388 of this Court, the purpose of presidential privilege or immunity from criminal prosecution is designed for the office of the President. Therefore, in principle, the individual who serves as the President may not waive the privileges covered by and protected under presidential criminal immunity. The said non-waiver of the privileges means that the President, in principle, should not make a general waiver of his immunity in

advance so as to protect the esteemed status of the presidency and the effective exercise of his authorities and functions from unforeseeable interference via criminal investigation and trial procedure. Nevertheless, the presidential criminal immunity is, in essence, a constitutional privilege of the President. A person who serves as president should have the discretion to determine whether any particular evidentiary investigation may in fact result in damage to or interference with the esteemed status of the presidency and the effective exercise of his or her authorities and functions. Thus, unless the President is treated as a defendant in a criminal prosecution or trial, or the esteemed status of the presidency or any interference with the exercise of his authorities and functions would be objectively and inevitably damaged in the evidentiary investigation, when the President waives the immunity and voluntarily cooperates with an evidentiary investigation on an *ad hoc* basis, it should be deemed consistent with the purpose of Article 52 of the Constitution, because the President does not consider that the particular evidentiary investigation would in fact result in any damage to the esteemed status of the presidency or any interference with the exercise of his or her authorities and functions while the investigation may or may not fall within the scope of presidential immunity. Nevertheless, it is apparent that the President may terminate such waiver and restore the immunity whenever the President wishes. As to the issue of whether the President's waiver of criminal immunity is contrary to the intent of this Interpretation, it should be determined by the court once the case is already prosecuted. In addition, since presidential criminal immunity is designed for the office of the president, the President is the only person who enjoys such privilege, and it does not extend to any other person. A principal co-offender, or a person who abets or assists, or other participants in the commission of a crime in which the President is involved, are not protected under presidential criminal immunity. Naturally, the criminal investigation and trial procedure conducted by the criminal investigation authorities and trial courts

against such third persons should not be affected by presidential criminal immunity.

[10] II. Presidential State Secrets Privilege

[11] No clear textual foundation specifically provides the President with “state secrets privilege” in the Constitution. However, the principles of separation of powers and checks and balances dictate that an executive chief, within the scope of the office’s functions and powers, should enjoy the power to decide not to disclose any classified information regarding national security, national defense and diplomacy. Such power is part of the executive privileges of the chief, as was clearly declared in *J.Y. Interpretation No. 585*, and is thus recognized under our constitutional law.

[12] The following is a summary of the powers granted to the President by the Constitution and the Additional Articles of the Constitution: Head of State (Article 35 of the Constitution), the supreme commander of the military (Article 36 of the Constitution), promulgating laws and orders (Article 37 of the Constitution, Article 2, Paragraph 2 of the Additional Articles of the Constitution), concluding treaties, declaring war and making peace (Article 38 of the Constitution), declaring martial law (Article 39 of the Constitution), granting amnesty and pardon (Article 40 of the Constitution), appointing and removing officials (Article 41 of the Constitution), conferring honors (Article 42 of the Constitution), issuing emergency decrees (Article 43 of the Constitution, Article 2, Paragraph 3 of the Additional Articles of the Constitution), calling a meeting of consultation (Article 44 of the Constitution), determining major policies for national security and setting up national security organs (Article 2, Paragraph 4 of the Additional Articles of the Constitution), declaring the dissolution of the Legislative Yuan (Article 2, Paragraph 5 of the Additional Articles of the Constitution), nomination (Article 104 of the Constitution, Article 2, Paragraph

7, Article 5, Paragraph 1, Article 6, Paragraph 2 and Article 7, Paragraph 2 of the Additional Articles of the Constitution) and appointment (Article 56 of the Constitution, Article 3, Paragraph 1 and Article 9, Paragraph 1, Subparagraphs 1 and 2 of the Additional Articles of the Constitution). As such, the presidency is part of the executive branch under the Constitution. Subject to the scope of the executive powers granted by the Constitution and the Additional Articles of the Constitution, the President is the highest executive officer and has a duty to preserve national security and national interests. The presidential state secret privilege is thus defined, within the authorities and functions of the office, as the President's power to classify information involving national security, national defense, and diplomacy when the disclosure of such information may jeopardize national security and national interests. As reference, the Legislature authorizes the President to unilaterally classify state secrets and keep them confidential permanently, as is clearly stated in Article 7, Paragraph 1, Subparagraph 1 and Article 12, Paragraph 1 of the State Secrets Protection Act. When other state organs operate and classified information is involved, presidential secret privilege should be duly respected by other state organs. Nevertheless, since the state secrets privilege is derived from the power intrinsic to the executive branch, the exercise of such power should follow the fundamental constitutional principles of separation of powers and checks and balances, as it is not an absolute power under the Constitution.

[13] Based on the presidential state secrets privilege, the President should have the right to refuse to testify as to matters concerning state secrets during a criminal proceeding, and refuse to produce the relevant evidence to the extent that the President may refuse to so testify. The Legislature should formulate additional provisions regarding the President in respect of the requisite elements and applicable procedures for the refusal to testify and refusal to produce relevant evidence. Prior to the enactment of such law, the President should provide a

preliminary showing that the inquiry and statements relating to state secrets would fall within the scope of the presidential state secrets privilege, or that the production and submission of the relevant evidence would jeopardize the national interest. If the preliminary showing fails to persuade, the competent prosecutor or trial court should consider the circumstances on an *ad hoc* basis and make a disposition or ruling in accordance with Article 134, Paragraph 2, Article 179, Paragraph 2 and Article 183, Paragraph 2 of the Code of Criminal Procedure. The President may raise an objection or interim appeal, pursuant to the intent of this Interpretation, if the President is not satisfied with the prosecutor's disposition or the trial court's disposition or ruling to overrule the President's refusal. The President's objection or appeal should be heard by the aforementioned special tribunal at the High Court (or its branch) by five judges and presided over by a senior division chief judge. Prior to the issuance of any ruling by the special tribunal, the enforcement of the original disposition or ruling should stand. The applicable provisions of the Code of Criminal Procedure should apply to the remainder of the objection or interim appeal proceedings. If the President's preliminary showing is provided in writing and claims that the relevant testimony or production of evidence would reasonably jeopardize national interests, the prosecutor and the court should defer to it. As to the determination of the likelihood that the President's testimony and production of relevant evidence in a confidential proceeding may jeopardize national interests, only the prosecutor or trial judge may proceed with the review under confidential proceedings. Even under confidential proceedings, when the prosecutor or the court uses the President's testimony or evidence that potentially jeopardizes to the national interest as a basis to justify the conclusion of the investigation or judgment, the President's testimony or evidence should be deemed as jeopardizing national interests.

[14] In determining whether the relevant provisions of the State Secrets

Protection Act and the Regulation Governing the Court's Safeguarding of Secrets in Handling Cases Involving State Secrets should apply to the trial proceedings in a particular case where information already submitted by the President is involved, the trial court should consider whether the President has duly classified the relevant information and determined the classification period in accordance with Articles 2, 4, 11 and 12 of the State Secrets Protection Act. If the information is not classified as state secrets, the aforementioned proceedings will not be applicable. Nevertheless, if, during the trial, the President reclassifies the information in question as state secrets, or provides other duly classified state secrets, the court should nonetheless continue the trial in accordance with the proceedings mentioned above. As for proceedings already conducted, there should be no violation of the relevant provisions of the State Secrets Protection Act and the Regulation Governing the Court's Safeguarding of Secrets in Handling Cases Involving State Secrets. Meanwhile, in determining whether the testimony or evidence classified as state secrets by the President may jeopardize the national interest, the aforementioned principles should be followed. Furthermore, the prosecution's investigatory proceedings should also be conducted under the same principles.

[15] III. Preliminary Injunction

[16] It should be noted that it is no longer necessary to review the petition for preliminary injunction in question since this Interpretation is rendered for the case at issue as the final decision. In addition, the petition at issue claims the President's exercise of authority conflicts with the trial of the Taipei District Court Criminal Case 95-Chu-Chung-Su-4 (2006) regarding the application of Article 52 of the Constitution. As to the petition of the alleged contradiction between the application of Article 63, Paragraph 1, Subparagraphs 1&2 of the Court Organization Act, Article 176-1 of the Code of Criminal Procedure, and Article 52 of the Constitution, the petition should be dismissed, for it is

inconsistent with Article 5, Paragraph 1, Subparagraph 2 of the Constitutional Court Procedure Act.

Background Note by Wen-Yu CHIA

The president involved in this case was Mr. Shui-Bian CHEN. Elected in 2000, he was the first president representing the Democratic Progressive Party (DPP) that ended the Kuomintang's (KMT) rule of Taiwan over five decades following World War II, including the KMT's authoritarian governance of four decades. In 2004, President CHEN barely won his second term by a margin of 0.2 percent of the popular vote. Politics in Taiwan became increasingly polarized after the 2004 election.

Together with the controversies regarding policies, polarization was also fueled by accused scandals and distrust of President CHEN, his team, and his family. Several people of the inner-circle of the President, including the first lady (Ms. Shu-Chen WU), were implicated in corruption, which was exposed by the media from August 2005. Eventually the President himself was also accused of being involved in the scandal, including embezzlement with respect to a presidential special fund on the pretext of secret diplomatic missions. In September 2006, led by a former chairperson of the DPP, hundreds of thousands of people, naming themselves as the "Red-Shirt Army," protested the alleged scandals in front of the Presidential Office Building in Taipei for two months, demanding CHEN's resignation from the presidency. The KMT and other opposition parties even threatened a motion of impeachment.

In response to the pressure from the political frontline, from June 29, 2006, prosecutors from the Investigation Task Force for Criminal Profiteering Crimes, Taiwan High Prosecutors Office, launched their investigations into the alleged scandals. Then prosecutors demanded documents from the President and

questioned the President. By November, Taiwan Taipei District Court Prosecutors Office formally indicted Ms. WU under the Anti-Corruption Act for the crime of forgery as a co-offender with President CHEN. The President himself was not formally indicted (though he was cited repeatedly alongside the first lady's alleged criminal actions in the prosecutorial motion), pursuant to the immunity granted to the President. The Taipei District Court proceeded with the trial against the first lady and other defendants. Nonetheless, the Office of President filed a constitutional petition in January 2007 according to Article 5, Paragraph 1, Subparagraph 2 of the Constitutional Court Procedure Act. The petition argued that the presidential immunity should extend to the first lady, and the District Court's request for the petitioner's (*i.e.* President CHEN) testimonies of the facts of the pending case would violate the state secrets privilege implicitly granted to the President according to Article 52 of Constitution. The Constitutional Court rendered J.Y. Interpretation No. 627 on June 15, 2007.

The prosecution against President CHEN immediately resumed on the day of his retirement from the presidency on May 20, 2008. For the original case that this constitutional petition was based on, Mr. CHEN and Ms. WU were convicted by the district court in 2009, but this verdict was later reversed by the Supreme Court and remanded for retrial by the High Court (Court of Appeal). In 2016, the High Court suspended the retrial of CHEN's case on the ground that CHEN was unable to attend court procedures because of sickness. As of September 2020, CHEN's case is still pending and yet to be finalized. However, CHEN was found guilty in several other scandal cases. He was put in custody in 2008 and then imprisoned in 2010. In 2015, CHEN was released on bail for out-of-prison medical treatment, which led to the suspension of the above-mentioned and other pending trials in 2016.

As to J.Y. Interpretation No. 627, it not only defines the scope and nature of presidential criminal immunity, but also recognizes and clarifies the scope of

presidential power. After the constitutional amendment in 1997 that cancelled the parliamentary confirmation power over the President's nominee to become the Premier of the Executive Yuan, many legal scholars considered that the structure of the central government had shifted from a parliamentary system to a semi-presidential system. However, the constitutional provision that designated the Executive Yuan (instead of the President) "the highest administrative organ of the State" (Article 53 of the Constitution) was not amended. Questions emerge with regard to the extent and scope of the presidential exclusive powers from and shared powers with the Premier. In support of the newly recognized of presidential state secrets privilege, this J.Y. Interpretation No. 627 explicitly recognizes that the president does wield the exclusive and highest powers with regard to the matters concerning national security, national defense and diplomacy. In these regards and to these extents, the president shall be considered the highest chief executive of government, while being the Head of State.

