Political Battles in the Courts: Justice or Democracy?

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This paper will examine the legal and political implications of the several lawsuits that followed the 2004 presidential election in Taiwan. The focus of this paper will be on the attitude and the role of the judiciary in the political process.

The first set of proceedings was initiated by the presidential candidates Lien Chen and James Soong to nullify the result of the election. Related proceedings were also brought to have the election declared null and void. In both sets of proceedings, the parties raised issues relating to the constitutionality and the application of the Referendum Law 2003. The third set of proceedings stemmed from a petition for a constitutional ruling made by several legislators on the issue of the constitutionality of the law that establishes the ‘319 Special Investigation Committee’. This paper will analyse these proceedings and their significance. Finally, it will discuss the constitutionality of KMT’s anticipated initiative to form the cabinet, following the recent marginal victory in the parliamentary election.

The increasing involvement of the judiciary in the process of constitutional reform, and constitutional crisis, in Taiwan has far-reaching implications. On the one hand, the role of the judiciary is defined by the boundaries of non-justiciable matters, i.e. matters that, because of their truly political nature, cannot form the subject matter of adjudication. On the other hand, the distinction between justiciable and non-justiciable matters is not conclusive. The judiciary itself must be actively aware of the importance of maintaining a neutral role in the process of democratisation in Taiwan.