

The when and how of declaration of death: An investigation into the right to judicial protection ¹

In August 2009, Typhoon Morakot wiped out the entire Hsiao Lin Village in southern Taiwan, leaving almost 500 dead and a trail of wreckage. The prosecutor declared a male victim's death on August 9, 2009 and his inheritance is passed down to his son, the eligible successor. One year later, it was made clear that the son had also been killed in the disaster. Yet his official time of death was put down as August 9, 2010. Since there was no one to claim the inheritance money, it was handed over to the Treasury. The case raises questions about the appropriate death declaration.

Following the disaster, a special act was put in place to govern the handling of post-disaster arrangement. The investigation found contradictions between the newly imposed Special Act for Post-Typhoon Morakot Disaster Reconstruction, which governed the death declaration of the father and the Civil Code that dictated that of the son. The Special Act provides that heirs of persons missing in a disaster may seek government compensation and subsidies by presenting a death certificate issued by the prosecution authority. Meanwhile, the Civil Code stipulates that in the absence of an eligible heir, the prosecutor shall proceed to pronounce a person dead and the inheritance be collected by the Treasury. Although the above is a lone case, an absence of heir, coupled with the prosecutor's failure to declare death in time will inevitably result in repeated problems in compensation and inheritance. Article 8 of the 1929 Civil Code prescribes a seven-year wait period before declaring a missing person dead. Yet in the modern days, it is reasonable to believe that under normal circumstances persons missing in a natural disaster would try all means to contact family or friends. The 1982 amendments to Civil Code only redefined the missing person's age and waiting period. It has been proposed that persons missing in natural disasters be presumed dead. By and large, the victims' family and the prosecution agencies would be better served if a judicial body were assigned to issue the death declaration.

The following decisions have been made in response to Control Yuan's redress. Although the Ministry of Justice has questioned the scope of Article 47-1 of the disaster relief act in authorizing prosecutors to issue death certificates, "independent legislative powers" empowers lawmakers to dismiss such questions. The prosecution agency will still be responsible for issuing victim's death certificates to ensure the families receive timely compensation and inheritance. Whilst the process is in compliance with Article 28 of Special Act for Post-Typhoon Morakot Disaster Reconstruction, it is incumbent upon the prosecutors to conduct "thorough investigations" before issuing a death certificate. As for the time of death, the Special Committee of Typhoon Morakot eventually agreed to put down August 9th 2009 as the official

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time of death for victims killed in the Morakot disaster.