

Wrongful detention and execution: An investigation into the right to judicial protection¹

A total of 5.13 million-dollar compensation has been given to Mr. Lu for the period of life imprisonment he had served due to wrongful sentencing. The sentence became effective before the verdict was finalized. The case reflects failure of the presiding judge and the prosecutor to carry out due process. It also marks the first incident in which a judicial body seeks compensation from one of its judges and prosecutors for gross malfeasance. A Control Yuan Member on duty launched an investigation to delve into the matter.

The Criminal Compensation Act states that “The State is entitled to seek indemnification from the civil servant who commits a malfeasance based on his/her intentional or grossly negligent of the Law, resulting in the claimant’s claim of wrongful imprisonment compensation.” An earlier version of the Act (enacted on September 1st, 1959) had no rules governing the subject, method, standard or liability of such compensation. After years of procrastination the Judicial Yuan introduced the “Enforcement Rules for Compensation for Miscarriages of Justice” on April, 16, 2002. In the period prior to the Enforcement Rules, the Judicial Yuan never redressed the judges involved in wrongful imprisonment, rendering the Criminal Compensation Act useless in its purpose of rectifying judicial personnel’s wrongdoings. Many individuals were incarcerated as a result of ill-intentioned sentencing or serious malfeasance on the part of the judges. Equally questionable are the initiation and enforcement of the existing Compensation Act. At present, all cases involving penalties and compensation are first submitted to the Judicial Yuan for review and approval, before going through a second review by the responsible court of law. Moreover, granting the court the power to seek subrogation risks potential cover-ups among government officials. As for Mr. Lu’s case, questions remain as to whether after Lu withdrew his appeal, the court was right to proceed with finalizing the verdict and making the sentence effective immediately. Currently, the law stipulates that the ruling be reviewed and executed by prosecutors from the district court. The two-tiered process has proven to be tedious, time-consuming, and could also lead to finger-pointing between the presiding judge who gave the verdict and the prosecutor who carried out the sentence.

In response to Control Yuan’s redress, the following changes have been made to ensure all necessary steps comply with due process. First, the responsible prosecutor is required to dutifully appeal for cases involving capital punishment or life

¹ Case no. 0990800804

imprisonment by examining whether or not the original trial court has submitted the case to a higher court, without which the case cannot be processed. Second, the High Court has requested district prosecutor office to compile monthly charts marked with a serial number of the Supreme Court's finalized verdict. The charts will provide an overview of the number of capital punishment and life imprisonment given during a certain period of time. Third, a two-tier review process has been added that begins with the responsible staff member checking for the serial number and ends with Chief Prosecutor's approval so as to prevent wrongful execution.