

## **Verdict in sexual assault case sparks controversies**

*The court's rulings on a series of toddler sexual abuse have sparked waves of criticisms from children's welfare groups and the public. In one of the cases, the defendant was given a light sentence, based on lack of evidence proving the act was in violation of the girl victim's free will. Meanwhile, another case involved a not-guilty verdict, because the presiding judge had decided that the time of assault in the girl's testimony did not match that determined by the forensic doctor. Questions arise as to applicability of existing laws, the judge's competence, and knowledge gap in child psychological development and protection, and adequacy of on-the-job training. Control Yuan Members launched an own-motion investigation and found a system unfavorable for underage sexual assault victims.*

For sexual assault cases, child victims are disadvantaged by underdeveloped mental immaturity, verbal expression, and memory which could be reduced by the traumatic effect following the incident. These unfavorable conditions affect children's ability to provide coherent testimonies. Lack of crime witness aggravates child victim's disadvantage. Since adults usually power over underage minors, it is not hard to imagine children yielding to adult perpetrators. Failure by presiding judge to take these circumstances into account can easily lead to misjudgment or unconvincing verdict. There's also the problem within the legal framework, in terms of the applicability of existing laws and unfair sentencing. Sexual Assault Crime Prevention Act stipulates that sexual assault cases be handled by professionally trained persons. However, the investigation shows pre- and post-training sessions with little emphasis on the knowledge and skills needed for handling child sexual assault cases. Despite having a special court in place, there is no standard procedure for selecting judges and providing trainings, leading to high turnover rate and poor knowledge of sexual assault trauma and child development. The Code of Criminal Procedure does not mandate assessment for all cases. Instead, prosecutors and judges decide whether to proceed with assessment on a case-by-case basis. In practice, however, only a small number of cases go through assessment or belated ones at best. Thus victims are subject to repeated court appearances, thereby potentially undermining their credibility.

The 2010 Criminal Court Resolution ruled that sexual assault on children under the age of seven are subject to Section 2, Article 222 of the Code of Criminal Procedure and can be charged as felony of forced sexual intercourse. However, for the aforementioned cases, the defendants were charged with "forced sexual intercourse with minors" of Article 227. It is a relatively lighter sentence. The sentencing was

based on whether the sexual intercourse was done by means “against the will of a male or female”, as stipulated by Article 221 and whether it’s an “offense against a male or a female under the age of fourteen” as stated in Article 222. In practice, however, such conditions would be difficult to verify for cases involving underage victims or those with mental disabilities. Moreover, the 2010 Resolution creates potential violation of *Nulla poena sine lege*, or no penalty without a law. The Ministry of Justice is advised to amend existing laws by considering children’s cognitive development, post-assault trauma and the status quo.

In response to Control Yuan’s recommendation, the Judicial Yuan and the Ministry of Justice have held public hearings to discuss an amendment of the Code of Criminal Procedure in the coming years and on the articles related to sex abuse respectively. The Ministry of Justice has also invited women’s groups and sought opinions from psychiatrists and counselors to advise on future amendments, while the Judicial Yuan has introduced a program to maximize court functions and has held public hearings with specialists from different fields to deliberate on the need to amend current assessment system and stepping up protection on sexual assault victims.