

Public defender system flawed

The Judicial Reform Foundation complained that the Fifth Criminal Court of the Taiwan High Court misused public defender in the process of the eighth remand for retrial for a kidnapping for ransom case by demanding the defendant to plead guilty via the public defender before the legal debate even began. The court then refused to investigate evidence advantageous to the defendant and closed the case in a mere two months. The Control Yuan Member decided that the case violates the principle of due process and fairness of the court and launched an investigation (Case no. 1010800235).

The law requires public defender, after being assigned to a case, to access court documents and evidence to acquire full knowledge of the case; to engage with the defendant at least once to obtain the facts, or, if necessary, survey the crime scene and relevant places to gather evidence in the defendant's interest; to appear in court, conduct examination and submit preparatory pleading; to petition the court to investigate evidence and conduct examination; and to dutifully draft a court paper in the defender's defense. However, the High Court cited Article 31-2 of the Code of Criminal Procedure to justify the use of a public defender for such case, stating that the defendant's lawyer was repeatedly absent without leave on scheduled trial days, prompting the need to assign a public defender, so as to ensure the defendant's rights. In fact, Article 31 only requires the use of public defender in the event that the defendant was not represented by a lawyer of his own choosing and that the said lawyer failed to appear in court as scheduled, neither of which actually occurred. Also, as it is common with the current practice that the public defender be matched with certain judge, the defendant has reasons to suspect that the public defender might be working in collusion with the judge. Article 14-3(d) of the ICCPR and General Comments No. 32 of the UN Human Rights Committee specifies that the defendant be assigned legal assistance "...in any case where the interest of justice so require...". However, such interest never occurred. The High Court's decision to replace the defendant's lawyer with a public defender is indeed questionable.

The CY's investigation found that Taiwan High Court's action violated Article 16 of the Constitution protecting the basic right to litigation, Article 14 of the ICCPR and contradicted Article 31-2 of the Code of Criminal Procedure and Article-6-3(c) of the substantive statements of the European Convention on Human Rights, and concluded that improvements need to be made to the existing public defender system. The CY's concluding findings and recommendations were issued to the Judicial Yuan for its reference and improvement.