

## Man Sentenced to Death despite Weak Evidence

### — The Case of Cheng Hsing-tse (鄭性澤)

*In 2002, shots were fired between the police and the offenders at a karaoke parlor in Fengyuan City, Taichung County. Officer Su Hsien-pi and one of the offenders were shot and died on the scene. Also present at the scene was suspect Cheng Hsing-tse, who admitted to firing gunshots during police interrogation. He was named the suspect who shot and killed officer Su. In 2006, the court found him guilty of murder and sentenced him to death. However, the prosecutor and the police officers allegedly committed unlawful acts, including altering the crime scene, extracting confession by means of torture, and failing to collect and concealing critical evidence. (Case no. 1030830498)*

Based on the complaints filed by Cheng's representative attorney, the Control Yuan launched an investigation and arrived at the following findings:

1. The police and prosecutor violated the rule of confession. Officers at the Fengyuan police station interrogated Cheng while he was being treated for the gunshot wound in the leg and extracted his confession by means of torture. The prosecutor proceeded to exhausting interrogation without considering Cheng's physical condition. The confession was used as evidence in the original final judgment, despite the fact that it was neither voluntary nor truthful.
2. The Control Yuan found inconsistencies in the evidence and the court's judgment. The original final judgment concluded that Luo Wu-hsiung was already shot dead prior to firing the alleged lethal shots at officer Su.
3. Autopsy report shows high levels of Lidocaine and alcohol in Luo's body, enough to boost his cardiovascular and the central nervous system, enabling him to fight back after being shot in the heart. Somehow, the said report was ignored. The court and the defendants were unaware of the said report, which would have provided "new" and "material" evidence to call for a retrial.
4. The suspect was convicted by the original final judgment without any thorough investigation to determine the ballistics and firing positions, which was unclear at the time of the trial. As such, the original trial court has violated Article 379 of the Code of Criminal Procedure.
5. The original final judgment failed to identify defects in the supplementary evidence, including witness testimony. The use of questionable evidence that were neither "relatively reliable" nor "proportional" has violated the evidentiary and empirical rules, thereby rendering the testimony inadmissible.

6. In the event that people were tortured, the court should be extra cautious when considering the credibility of witness testimony, which accuses Cheng of firing at the police officer.

In March 2014, the Control Yuan issued an official letter recommending the Supreme Court Prosecutor's Office to file an extraordinary appeal and apply for a retrial. The defendant's attorney also applied for a retrial after the Control Yuan's investigation. The Supreme Court Prosecutor General later filed an extraordinary appeal on August 19, 2014. The extraordinary appeal was rejected again by the Supreme Court on August 28, 2015. As new evidence appeared to cast doubt on Cheng's conviction, prosecutors at the Taichung Branch of the Taiwan High Prosecutors' Office on March 21, 2016 announced that they would apply for a retrial.