



ILLUSTRATION: ANGELA CHEN, TAIPEI TIMES

Criminal justice

Defendants living with mental illnesses are being let down by a court system that critics say is fundamentally flawed

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STAFF REPORTER

IN the early hours of June 5, 2007, a gasoline bomb was thrown into Hua Xin Cleaners (華新洗衣店) in Kaohsiung City's Zuoying District (左營). Four people in the building died in the ensuing blaze. Within a week, police had named university lecturer Chen Pei-yuan (陳培元) as a suspect. A month later, Chen was charged with murder and on June 25 last year convicted in his first trial and sentenced to life in prison. The case is now at the Kaohsiung branch of the High Court, where, if found guilty again, he could be sentenced to death.

But prejudice and a flawed judicial system may have resulted in an unfair first conviction, in a case that highlights how the system fails defendants with mental disorders, Chen's lawyer and anti-death penalty advocates say.

Chen's attorney, Thomas S.K. Chan (詹順貴), says his client should never have been convicted. He calls the evidence against Chen "far-fetched" and believes he was convicted because he has a history of mental illness and was in the wrong place at the wrong time.

Chan, of Primordial Law Firm (元貞聯合法律事務所), has extensive experience defending suspects with mental disorders. The Kaohsiung case, he said in an interview, illustrates widespread prejudice against people living with mental illnesses — discrimination that can translate into miscarried justice.

There is an assumption that people with mental disorders are dangerous, he said, and this can have an impact on the case at various points in the judicial process.

"In many cases, people with mental disorders are wrongly blamed for a crime," Chan said. "The potential for this is high because they are labeled [by society as dangerous], so if a crime is committed and there happened to be a person with mental problems near the crime scene," it is likely that person will become the suspect.

A 'CLASSIC EXAMPLE'

"The Kaohsiung case is a classic example," he said. "When the police started their investigation, they discovered that a man with mental illness was living next door [to the laundry service]."

According to medical records, Chen suffered symptoms indicative of schizophrenia about 10 years previously, including audio-visual hallucinations and urges to set fires or kill people, Chan said. Chen had no criminal record.

Yet "the police considered the chances high that he was the perpetrator [because of his medical history], so they searched his home," Chan said. They "found a bunch

of cloth strips. They believe these were for igniting gasoline bombs."

But the cloths are nothing unusual, he said. They are easy to find in stores and Chen's mother said they were hers, left over from cleaning the house.

Moreover, the two witnesses who believe they saw the perpetrator of the crime could not identify Chen, Chan said.

Chiang Hui-ming (江惠民), a spokesman for the Taiwan High Prosecutors' Office Kaohsiung branch, confirmed that the cloths were the key evidence at the first trial, but said judges consider a wide range of evidence before ruling in a case. Furthermore, prosecutors do not discriminate against people with mental illnesses, nor would they indict someone based on a mental disorder, he said.

MENTAL HEALTH EVALUATION

Chan has other concerns about the case. An evaluation at the first trial to determine Chen's mental condition was inadequate, Chan said, and determining his mental state could be a matter of life or death because judges have the power to show leniency in criminal cases involving mental illness.

Article 19 of the Criminal Code (刑法) allows for a milder sentence in cases where a defendant's judgment was impaired by mental illness.

The Taiwan Alliance to End the Death Penalty (TAEDP, 廢除死刑推動聯盟) and the Alliance for the Mentally Ill (TAMI, 康復之友聯盟) share Chan's concern.

"Chen Pei-yuan was interviewed for a couple of hours and his mother was interviewed for a couple of hours; then a report was written [for the court]. How can you base a report about whether someone has a mental disorder [like schizophrenia] on an interview that is two or three hours long?" TAEDP director Lin Hsin-yi (林欣怡) said.

Although the report stated that Chen was mentally ill, Chan says a more complete evaluation is needed. The prosecutor is dissatisfied with the result of the first trial — in which the District Court rejected the request for the death penalty based on Chen's mental health — and hopes at the second trial to show that Chen is mentally healthy and fit to be executed.

Chiang at the prosecutors' office explained that Chen's career as a university lecturer indicates he is mentally fit, while the District Court wrote in its ruling that Chen acted normally at the court hearings. Furthermore, Chen may not have been mentally ill when he

allegedly committed the crime, Chiang said.

Although Chan believes Chen is innocent and that the evidence is insufficient, he recognizes that a second conviction is a real risk. A more complete evaluation could at least convince the High Court to reject the death penalty in favor of life in prison.

Chan therefore consulted the TAMI on Chen's case, and presented the High Court with its recommendation for a more thorough assessment, in which Chen would be admitted to a hospital for round-the-clock observation. The High Court granted the request and the evaluation is in progress.

But Chan said the case highlights a problem: Judges have full control over what method of evaluation to order and can even reject a defense lawyer's request for an assessment.

"It's not an adversarial system like in the US," forensic psychiatrist Wu Chien-chang (吳建昌) explained. "In the US, the plaintiff lawyer finds their own expert witness and the defense lawyer [too], so they have two expert witnesses fighting in the court. But in Taiwan, we are appointed by the court."

Wu performs mental health evaluations for criminal cases. He is head of National Taiwan University Hospital's forensic psychiatry team and has a degree in law with a specialty in health policy.

"The judge is the gatekeeper," he said. If the defense lawyer argues effectively for an evaluation, the judge should grant it.

While it could be a problem that judges have full power, it is difficult to know whether valid requests for evaluations are being rejected, because court documents are not open to researchers, Wu said.

Regarding Chan's concerns that Chen's first evaluation was inadequate, Wu said in some cases interviews could be enough, but could not comment on Chen's case. However, as a forensic psychiatrist, Wu said he informs the court if he feels an evaluation method is inadequate.

"In the past I encountered some patients who would not respond [to questions] and then, because I did not want to count on the family's descriptions only, I would ask the court to allow me to admit this person to the hospital so that I could observe him or her, maybe for a week, maybe longer," he said.

EXECUTING THE MENTALLY ILL

But even if Chen's new evaluation for the High Court concludes that he suffers from a severe mental disorder, the court is not required by law to show leniency — and that is where Article 19 violates international standards, TAEDP says.

"When we learned that the prosecutor [knew Chen has a history of mental illness] yet sought the death penalty, we were shocked. This shouldn't happen," Lin said.

The UN Commission on Human Rights adopted resolutions against executing anyone "suffering from any form of mental disorder" in 1999 and 2000.

By contrast, the Criminal Code distinguishes between levels of mental illness.

"We have three levels of criminal responsibility: The first level is full responsibility for what [someone] did," Wu explained. That is followed by "diminished responsibility" and finally "no responsibility," or "insanity."

"If a person is found to have been insane when they committed the crime, [the article says] they should not be convicted," he said. If the judge concludes he or she had only a "diminished" understanding of his or her actions, the article allows, but does not require, a milder sentence.

It is difficult for a lawyer to convince a judge that a defendant should bear no responsibility for a crime, and easier to argue for diminished responsibility, he said. Furthermore, "insanity" is a legal term that does not correspond to any specific diagnosis in psychiatry, so a psychiatrist may conclude that a person is mentally ill without a judge considering them "legally insane."

This means Chen could be sent to death row regardless of the results of the second evaluation.

TRIAL DELAYED

Chen's trial revealed another problem with the system for mental health evaluations. The proceedings at the High Court were tied up for months because hospitals refused to do the assessment, and the court cannot compel them to cooperate.

"There are three hospitals in Kaohsiung capable of doing this kind of evaluation. Two of them flatly refused," Chan said.

The third one was ruled out because Chen has his medical records there. Chen was concerned the doctors would be biased against him. He wants to prove that he has been wrongly labeled as mentally ill and denies having any form of mental illness — even though proving he has a disorder could keep him off death row.

This is common, Chan and Lin said. Defendants with disorders that might warrant a more lenient sentence are loath to admit to having a mental illness because of the social stigma. Prejudice against mental illness could make it difficult to be accepted in society or

get a job, for example.

"In Taiwan, usually defendants will hide this fact because they don't want people outside to think they are not normal," Lin said.

The two hospitals that refused to work with the court said they did not have any room available for Chen, but Chan did not believe that explanation, and eventually, with pressure from the TAMI, one has admitted Chen for the evaluation.

"The hospitals didn't want trouble, as there could be some public pressure [because the case is being followed by the media] and because after doing the assessment, the doctors will probably be called to testify in court," he said.

PUSHING FOR CHANGE

Wu said it was the first time he had heard of hospitals refusing to help a court, and he did not know how often this problem arose.

He heads an academic committee at the Society of Psychiatry (精神醫學學會) that is collecting information on the judicial system's treatment of mental illness.

The society hopes to improve mental health evaluations for criminal cases and is in the early stages of identifying problems and solutions for a proposal to the Judicial Yuan.

Chan believes the society's work could lead to key improvements. Judges are not psychiatrists, he said, yet have the power to grant or deny a mental health evaluation or even to ignore the results in a ruling.

The Judicial Yuan could set guidelines for its judges based on the professional input of the society, he said. That could mean greater consistency in how mental health evaluations are carried out and used by judges. It would not require legislation, because the Judicial Yuan is empowered to implement such regulations.

Lin agreed this would be an improvement, but is concerned it would not be enough. She wondered whether judges would comply with the guidelines.

Nor would guidelines change Article 19. Taiwan has at least four people on death row who are believed to have mental disorders, Lin said. She cited two recent cases in which the judges said in their sentencing that they believed mental illness had played a role in the crimes: Wang Kuo-hua (王國華) and Kuang De-chiang (廣德強), both of whom were convicted of murder.

In both cases, the judges declined to hand down a milder punishment, Lin said.

Wang and Kuang were sent to death row, where they remain. And if prosecutors get their way, Chen may soon join them.

ADDITIONAL REPORTING BY RICH CHANG