



Supreme Prosecutors Office

News Release

Released on: June 20, 2012

Released by: Chief Registrar's Office

For the first time in Taiwan's judicial history, a number of prosecutors carried out a sit-in protest outside the Supreme Court on June 4, 2012. This was because during the second criminal court meeting on January 17, 2012, the Supreme Court had for a purpose resolve to narrow the interpretation of "important matters relevant to upholding of fairness and justice" under Article 163, Paragraph 2 of the Code of Civil Procedure, to restrict such matters exclusively to those advantageous to the defendant. As such narrowing of interpretation seriously affected the scope of discretionary investigative powers of the court and a determination of whether a court should have investigated evidence before the judgment date but fails to do so under Article 379, Paragraph 10 of the same Code, it was effectively an amendment of the law that altered Taiwan's judicial system, and inclined the litigation framework more substantively towards an adversarial system. Such change not only caused an uproar amongst all prosecutors, who signed a joint petition opposing the change, it also caused a controversy amongst the legal academia and practice. Prior to the sit-in protest, Prosecutor General Huang had proposed to Chief Judge Yang of the Supreme Court that the Court first hold an academic symposium to widely invite the judiciary, prosecutors, defense counsels and members of the academia to fully discuss the issue, so as to fully and properly consider whether the resolution should be amended and to resolve the protest. Unfortunately such proposal was not adopted by the Supreme Court. Subsequently Prosecutor General Huang had immediately instructed Ms. Zhu Fu-Mei, a prosecutor of this Office, to closely study the background information to the Judicial Yuan's legislative amendment at the time, to compile relevant academic papers and comments from legal and judicial practices, and to study whether a court's investigation of evidence based on its discretionary powers would result in passing of the evidentiary burden to prosecutors under international human rights treaties, as well as whether there is a violation of the statement or interpretation of the principle of "presumption of innocence". Prosecutor Zhu's resultant opinion was submitted to the Supreme Prosecutors' Meeting on June 15, 2012 for discussion and was subsequently adopted by this Office. After Prosecutor General Huang had approved the matter, said opinion has been submitted to the Supreme Court today, in support of this Office's request that said Court re-consider all matters surrounding the issue.

The opinion adopted by the Supreme Prosecutors' Meeting has found that the aforementioned Supreme Court resolution contained a number of non-conformities with legal principle:

- (1) It ignored matters specifically set out in the legislative reasons of the legislators, went against the intentions of the legislators, and narrowed the interpretation of a legal provision by resolution for a purpose, which was substantively a legal amendment. The Supreme Court had acted in violation of the legislative rights of the Judicial Yuan, and seemed to have contravened the doctrine of separation of powers.
- (2) It ignored the fact that Taiwanese legislature has implemented an refined adversarial system that still retains elements of the ex officio system. When defining the courts' obligation to clarify matters and the prosecutors' obligation to prosecute, the Supreme Court has failed to study carefully the differences in the "burden of proof" referred to under the criminal litigation procedure in different legal systems; nor did the Court carefully study why the

provisions regarding the courts' discretionary investigative powers in continental European countries have never been found to be violating the international principle of "presumption of innocence". Instead, the Supreme Court had callously simplified a court's discretionary power and duty to investigate to clarify a matter as being equivalent to the judges having a burden of proof, then further distorting it to mean that the courts had taken on the prosecutors' burden of proof and had failed to remain an impartial court.

- (3) The Supreme Court had failed to consider that there is no regulation or interpretation anywhere in the international human rights conventions, that stated a court's conduct of investigations in accordance with its discretionary powers would necessarily violate the principle of "presumption of innocence". The aforementioned Supreme Court resolution had raised high the "presumption of innocence" principle in two conventions as the basis for its opinion, but had provided no explanation as to under which regulation, interpretation or opinion of an international human rights convention would lead to a determination that a court's investigation of evidence based on its discretionary powers, or investigation of evidence disadvantageous to the defendant's case, would violate the principle of "presumption of innocence".
- (4) The aforementioned Supreme Court resolution restricted the matters that a court should exercise its discretionary powers to investigate for "upholding of fairness and justice", on the ground of not contradicting the provision that prosecutors should bear the substantive burden of proof and the principle of "presumption of innocence". It limited the provision to matters advantageous to the defendant, but had overlooked the fact that the principal purpose of the Code of Civil Procedure should be the discovery of truth, punishment of the guilty, protecting the innocent from punishment, and upholding of legal order and peace in a litigation procedure that conforms to principles of fairness and justice, and not to ignore the upholding of fairness and justice or the protection of the injured parties' interests. Its so-called "interpretation for a purpose" is overly narrow and arbitrary.
- (5) Without investigation, it is not possible to determine whether an item of evidence is a matter advantageous to the defendant's case. Further, whether a matter would be advantageous to the defendant's case cannot be determined independently and singly; often one must take into account all of the facts, exhibits and testimonies of the case before making a determination. The aforementioned Supreme Court resolution has restricted the matters that a court should investigate to "uphold fairness and justice" to only matters that would be advantageous to the defendant. This is effectively asking judges to make presumptive judgments, to become partial. Not only is such resolution contrary to the principle of not making presumptive determinations about the value of evidence, it also runs counter to the ideals of a fair and impartial court.