

Developments in the Law in 2011: Criminal Procedure Law

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Abstract

The paper introduces and evaluates the important developments of Taiwan's criminal procedure law in 2011. The Supreme Court delivered two revolutionary and historical decisions in 2011. One is the trial courts have no more duty to investigate evidence unfavorable to the accused. Before this decision, it is unclear whether trial courts have such a duty. In order to avoid reversal of judgments, most trial courts would investigate evidence favorable and unfavorable to the accused, which is the inquisitorial tradition. Another important decision is to impose more duty on trial judge in sentencing, especially in death penalty cases. The Supreme Court declared when the prosecutor seeks death penalty, the trial court must hear arguments for and against it from parties. In addition, when the trial court imposes a death penalty, it must explicitly explain why it could not impose other sentence, such as life imprisonment, than the death penalty. Another important development is the Judicial Yuan's policy in adopting lay people's participation in trial. Nonetheless, under the Judicial Yuan's plan, the trial judges could veto the lay people's decision. For this reason, the academics criticize the proposed model is not in the nature of real lay people's participation.

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