

Reviewing J.Y. Interpretation No. 789 and Rethinking the Credibility and Reliability of Victims' Statement

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Abstract

The Taiwan Constitutional Court (TCC) issued Interpretation No. 789 at the end of February 2020 regarding the constitutionality of Article 17, paragraph 1 of the Sexual Assault Crime Prevention Act (SACPA). TCC said SACPA §17I, which regards a sexual assault victim statement in front of police officers as a hearsay exception, is not unconstitutional. However, in order to complement the defendant's defense, several balancing measures are needed, such as to consider the victim's statement as a "secondary evidence" or to make supplementary evidences required to support the truthfulness of the fact stated by the victim. This article analyses the issues that may arise from a strict interpretation of SACPA §17I and argues that since cross-examination could examine the credibility and the reliability of witness statements, the supplementary evidences, as a remedy for lack of interrogation, should be used as evidences that aid in enhancing also the credibility and the reliability of the statements, rather than supporting the truthfulness of the fact stated by the victim. The difference between the concept of credibility (and reliability) and the concept of probative value, which means evidence which is sufficiently useful to prove something existed should be distinguished in the level of evidence. On the other hand, however, the meaning of so-called "corroborative evidence" cited in Interpretation No. 789 should be considered as the reinforcement of the credibility and reliability of the statements, not as the direct reinforcement of truthfulness. We need another "corroborative evidence" to support the truthfulness of the facts because of the risk of wrongful conviction which oral statement shall cause generally. Finally, this article outlines

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the criteria for determining credibility of a victim statement as an evidence referring to the criteria related to the credibility of confessions, and outlines the directions for the future consideration from the aspects of witness characteristics, observation, memory, and statement performance.

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