

Discussion on the Retrial of Discovering the New Proof in the Criminal Procedure: The Application and Reform of the 2015 Amendment

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Abstract

On January 23, 2015 Legislative Yuan amended Article 420 of the Code of Criminal Procedure, the retrial of discovering new proof. The Amendment broke through the strict limitation of novelty and authentic of the proof. Hopefully, the amendment would reach the goal of lower the threshold of retrial. However, how to interpret and apply the amendment, whether there's still necessity to reforms would be new challenges to the scholars and the practitioners of the Code of Criminal Procedure. This study points out, the purpose of the retrial of new proof is to achieve substantive justice and legal remedy of the innocents. New proof refer to evidence the trial court have not evaluated before, but would shatter the fundamental fact of the original judgment and bring the possibility of retrial. The retrial court shall not increase the burden of proof on the convict to explain the reason for filing retrial, and shall not prejudice the proof, which would reduce the possibility of remedy. On the aspect of legislative policy, this study suggests: delete subparagraph 1-4 of Article 420, integrate these sections into the subparagraph 6, the discovery of new proof, and expand the purpose of subparagraph 6.

Keywords: substantive justice, legal remedy of right, stability of law, a favorable retrial decision, novelty of the proof, significance of

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the proof, in dubio pro reo, the obligations to propose and explain