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Taiwan’s Criminal Case System and
the Development Direction of the Guiding Cases System
in the People’s Republic of China

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I. Introduction

The Supreme People’s Court of the People’s Republic of China adopted the Provisions of the Supreme People’s Court Concerning Work on Case Guidance in November 2010 and, since then, has released seven batches of guiding cases (“GCs”). The formulation of these provisions and the release of the GCs demonstrate that the Supreme People’s Court is committed to resolving problems among courts of all levels that arise from the determination of facts and the application of law. At the same time, GCs also provide litigants, attorneys, and judges guidance when similar cases are handled. This is of great contemporary and economic significance, for both the timely resolution of disputes and the protection of litigation and human rights.

The Guiding Cases System is different from the Selected Cases of the People’s Courts and the Selected Major Trial Cases in China, also compiled by the Supreme People’s Court, in that it establishes a new system to beneficially supplement statutory law. GCs seem to have been conferred a status similar to [that of] judicial interpretations. Although the Provisions of the Supreme People’s Court Concerning Work on Case Guidance does not clearly identify which part(s) of each GC courts should refer to when handling similar cases, the judges in charge of the pending cases may rely on their understanding of the issues in dispute, such as the facts of the cases and relevant law, and then refer to the “Basic Facts of the Case” and the “Reasons for the Adjudication” provided in the GCs for guidance on how to adjudicate [the pending cases]. This is of great assistance to the resolution of disputes and the unification of related legal opinions.

Seizing the opportunity presented by the establishment of the Guiding Cases System, this Commentary will briefly introduce Taiwan’s current criminal case system, with a particular focus on Taiwan’s judicial criminal practice. Through illustrations of how to resolve problems arising from criminal cases, this Commentary will explore the development directions of Taiwan’s criminal case system and the Guiding Cases System of the People’s Republic of China.

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2 All guiding cases (“指导性案例”) released to date can be found, in the original and in translation, on the website of the China Guiding Cases Project (“中国指导性案例项目”), available at http://cgc.law.stanford.edu/guiding-cases/.
II. Taiwan’s Criminal Case System

In Taiwan, criminal cases are generally adjudicated in accordance with what is called the “three-level and three-instance” system. This system excludes cases in which the prosecutor applies for a summary judgment as well as a small number of cases with restrictions on appeals to the Supreme Court. The “first instance” is when the prosecutor first brings a case to a District Court. After the adjudication, if a party is dissatisfied with the judgment of the District Court, it may bring the case to the High Court or any of its branches that has jurisdiction; this is the “second instance”. If the party is dissatisfied with the judgment of the high court, the case can be appealed to the Supreme Court; this is the “third instance”. District Courts and the High Court adjudicate questions of fact, and thus must ascertain the facts first and then apply laws to the facts accordingly. The Supreme Court adjudicates questions of law only, and thus reviews whether the law was applied correctly in the first two instances to decide whether the appeal is legal or groundless.\(^5\)

Taiwan uses a statute-based system that originated from the civil law tradition, which is different from countries with precedent-based, Anglo-American legal systems. Nevertheless, when Taiwan’s *Criminal Procedure Act*\(^6\) was extensively amended in February 2002, many U.S. legal concepts were adopted. For example, the inquisitorial system initially adopted by Taiwanese courts gave way to an adversarial system. [Further,] U.S.-style cross-examination is emulated during court proceedings, allowing the prosecutor and defendant (or defendant’s counsel) to cross-examine witnesses. As a result, court neutrality is achieved when hearing and deciding cases.

In fact, when courts at all levels in Taiwan adjudicate criminal cases, they often refer to many court cases. When the litigants or courts of any level would like to learn about or search for related judicial practice cases, [they] usually perform a search in the “Law and Regulations Retrieving System”\(^7\) provided either on the website of the Judicial Yuan or on the intranet system of each court. This retrieving system provides the “Judicial Judgments, Interpretations, and Explanatory Notes” database, which includes: conference interpretations of the Justices of the Constitutional Court, Judicial Yuan; the precedents and adjudications of the Supreme Court; the adjudications of the High Court and its five branches; the adjudications of the District Courts; the resolutions of the Supreme Court, and [special] “discussions” of legal issues.

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This section will explain the authority of the conference interpretations of the Justices of the Constitutional Court, Judicial Yuan, the Supreme Court’s precedents, adjudications, and, resolutions, and [special] “discussions” of legal issues in the courts’ adjudication of criminal cases.

1. Conference Interpretations of the Justices of the Constitutional Court, Judicial Yuan

Article 78 of the Constitution states: “The Judicial Yuan interprets the Constitution and has the power to unify the interpretations of laws and decrees.” A Taiwanese court, no matter whether it is a District Court, the High Court, or the Supreme Court, does not have the power to interpret the Constitution or unify the interpretations of laws and decrees. Thus, Article 3 of the Organic Act of the Judicial Yuan provides:

[T]he Judicial Yuan has seventeen Justices to handle cases on the interpretation of the Constitution and on the unification of interpretations of laws and decrees. [These Justices] also constitute Constitutional Tribunals to handle [matters regarding] the unconstitutional dissolution of political parties, and [these matters] are handled collegially. The Conference of the Justices of the Constitutional Court is chaired by the Chief Justice of the Judicial Yuan […].

The primary functions of the interpretations of the Justices are, on the one hand, to determine the meaning of the Constitution and resolve doubts about or disputes over the application of the Constitution and, on the other, to conduct reviews of laws and decrees so as to ensure their constitutionality. Thus, the conference interpretations of the Justices of the Constitutional Court have legal status such that courts at all levels, when handling cases, must

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The Judicial Yuan is different from the Ministry of Justice. The Ministry of Justice is the organ in charge of judicial administration, overseeing Taiwan’s public prosecution, corrections, judicial protection, ethics for government employees, and the legal affairs of the Administrative Yuan. Organs under the Ministry of Justice are classified into five large categories based on their functions: (1) procuratorial organs; (2) investigative organs; (3) correctional organs; (4) administrative enforcement organs; and (5) organs against corruption. These organs are respectively responsible for carrying out various important administrative duties, including curbing crime, upholding justice for the people, correcting and educating inmates, counseling rehabilitated offenders, protecting victims of crimes, promoting anti-corruption reforms, providing legal consultations, and executing claims of debt under public law. For more information, see http://www.moj.gov.tw.

9 Organic Act of the Judicial Yuan, supra note 8, Article 3.

10 See 黄建荣 (HUANG Jianrong), 法安定性考虑在司法实务上之适用 (Applications of Considerations on the Stability of Law in Judicial Practices), 《台湾高雄地方法院八十七年度研究发展项目研究报告》 (Taiwan Kaohsiung District Court's Research Report of the 87th Annual Research and Development Projects), at 19.
adhere to the content of these conference interpretations, and cite and apply them to the cases.

2. **Precedents of the Supreme Court**

According to Article 57 of the *Organic Act of the Courts*:

[T]hose adjudications of the Supreme Court in which [the Supreme Court’s] legal opinions are considered necessary for compilation as precedents should, after passing of a resolution by the Civil Divisions Conference, the Criminal Divisions Conference, or the Civil-Criminal Divisions Joint Conference, be reported to the Judicial Yuan for examination. [Each of these Conferences] shall be composed of the Chief Justice, the Division Chief Justices, and other judges [of the Supreme Court].

Thus, a process is legally provided for the Supreme Court to compile precedents.

The *Supreme Court’s Selected Precedents and Guidelines on the Implementation of Modifications* provides more detail. Article 2 states:

When the Division Chief Justices of the Civil and Criminal Divisions of the [Supreme] Court consider it necessary to compile as precedents those adjudications [in which they rendered important legal opinions], [they] must submit [the adjudications] to the Chief Justice for review. Thereafter, [the adjudications are sent] to the Office of Records, where first drafts of selected precedents are compiled according to year, category, and the order of legal rules, and then delivered to the Chief Justice for examination […].

Article 4 outlines the procedure for the examination of precedents:

The examination of precedents is divided into the preliminary examination and the re-examination. The preliminary examination is conducted by an examination panel formed by a Division Chief Justice and a certain number of judges designated by the Chief Justice. Once the first draft of a selected precedent is prepared, an examination report stating the reasons for the edits must be submitted to the Chief Justice for review. Thereafter, a Civil Division Conference, Criminal Division Conference, or a Civil-Criminal Divisions Joint Conference is held to conduct the re-examination.

Article 5 continues:

When in the course of handling a case, the Civil or Criminal Division, based on its view of the law, considers it necessary that a precedent be modified, the

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11 *Organic Act of the Courts*, *supra* note 5, Article 57.
division must draft a proposal stating the reasons [for the modification] and submit [the proposal] to the Chief Justice for review. [Then], the procedure for the selection and compilation of precedents can be used [again] to address [the proposed modification]. However, a resolution [containing a proposed modification] passes only with the approval of more than half of those who attend the [division conference].

Nevertheless, the current compilation of precedents records only the main points of each precedent, without more. As a result, one cannot understand the background against which these points are made, the related facts of the cases, and the reasons for and content of the judgments. Therefore, when judges have doubts about the applicability of the main points of a precedent, they still consult the *Compilation of Full-Text Precedents of the Supreme Court*. In the *Compilation*, the full text of every precedent includes the following sections: “Main Points of the Precedent”, “Related Legal Rule(s)”, and “Full Text of the Adjudication”. The “Full Text of the Adjudication” section includes the names of the parties, main text, reasons, and applicable legal rule(s). Judges can consider and then cite [in the pending case] the facts, the application of law, and the opinions recorded under the “Reasons” subsection of a precedent’s “Full Text of the Adjudication”.

In the operation of Taiwan’s criminal case system, Supreme Court precedents are, according to [Taiwan’s] law, binding; they act as a supplementary source of law. Therefore, those criminal cases of the Supreme Court selected as precedents can serve as bases for lower courts’ adjudications. If there are any concerns about the constitutionality of the precedents cited in a court’s adjudication, the people [of Taiwan] can request, in accordance with Article 4(2) of the Act on Adjudication of Cases by Justices of the Constitutional Court of the Judicial Yuan, that the Justices of the Constitutional Court, Judicial Yuan, make an interpretation to safeguard the rights of the people.

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13.  See 黄建荣 (HUANG Jianrong), *supra* note 10, at 77 (citing 韩忠谟 (HAN Zhong Mo),《法学绪论》 (*INTRODUCTION TO LAW*) 25 (北京大学出版社 (Peking University Press), 2009).

14.  “Matters for which the Justices of the Constitutional Court interpret the Constitution are as follows: (1) matters concerning doubts about the application of the Constitution; (2) matters concerning whether laws or decrees violate the Constitution; (3) matters concerning whether autonomous provincial laws, autonomous county laws, provincial regulations, and county regulations violate the Constitution. The aforementioned matters are limited by the provisions of the Constitution.” 《司法院大法官审理案件法》 (*Act on Adjudication of Cases by Justices of the Constitutional Court of the Judicial Yuan*), promulgated on Sept. 15, 1948, amended most recently on and effective as of Feb. 3, 1993, available at http://www.judicial.gov.tw/constitutionalcourt/p07_2.asp?lawno=58, Article 4. Article 5 of the Act clearly states who may apply for constitutional review by the Justices.

15.  See 黄建荣 (HUANG Jianrong), *supra* note 10, at 80.  However, Justice CHEN Jinan has opined that precedents are not law and have no legal binding force over lower-level courts.  Thus, they cannot be a matter for constitutional review.  See 黄建荣 (HUANG Jianrong), *supra* note 10, at 80–81.
3. Adjudications of the Supreme Court

Each month, the Supreme Court selects, from cases it handled, civil and criminal adjudications that have referential value and compiles them into the Main Points of Adjudications with Referential Value Prepared by the Civil Divisions of the Supreme Court and the Main Points of Adjudications with Referential Value Prepared by the Criminal Divisions of the Supreme Court for judges’ reference. These compilations generally contain discussions of important or controversial points selected by the Supreme Court from the reasons stated in its adjudications. For example, the 97th Year of the Republic Tai Shang Zi No. 2019 Main Points of the Adjudication is as follows:

With respect to crimes of seeking profit from affairs under [one’s] management or supervision as stated in Article 6, Item 1, Paragraph 4 of the Corruption Offences Ordinance, the term “affairs under [one’s] management” refers to those affairs that a public functionary has the power to manage and execute within the scope of his duties in accordance with legal provisions. The term “affairs under [one’s] supervision” refers to those affairs that a public functionary does not have the power to manage but has the power to supervise and monitor within [the scope of] his duties in accordance with legal provisions. The issue as to whether the affairs are under [one’s] management or supervision should be determined by each organ’s organizational regulations or relevant legal provisions. Further, [affairs under one’s] management or supervision belong to two different categories, and it is impossible for a public functionary to be both a manager and supervisor of the same affair; this interpretation is obvious. The affairs managed or supervised by the public functionary should be clearly ascertained under the heading of facts and should be recorded in detail, and only then can they serve as a sufficient basis for the application of law.

It is clear from the above example that these compilations of the main points of adjudications do not include any facts from the cases. However, judges still need to compare the similarities and differences between the facts and nature of different cases before citing the Supreme Court’s adjudications or main points of adjudication as the reasoning and basis for their adjudications. To courts, the main points of adjudications or the adjudications themselves are not legally binding. They simply act as a reference point when handling cases. An upper-level court cannot revoke the original judgment rendered by a lower-level court and remand the case for retrial solely because the lower-level court does not follow the Supreme Court’s main points of adjudications or the adjudications themselves.

4. Resolutions of the Supreme Court

The Supreme Court is in charge of handling the final adjudication of civil and criminal cases. Because this [involves] adjudication of law only, the Supreme Court relies on the facts ascertained in the second-instance judgment. Also, because of the principle of adjudicatory
independence, the divisions of the Supreme Court are not subordinate to each other, which may lead to situations where these divisions hold different legal opinions in similar cases, resulting in the problem that similar cases may be decided differently. In order to unify legal opinions, resolutions on controversial legal opinions can be reached in conferences presided over by the Chief Justice of the Supreme Court when at least two-thirds of the Division Chief Justices and judges are in attendance and there is approval by more than half of the attendees.¹⁶

The Preamble of the *Compilation of the Supreme Court’s Resolutions* states:

[The Supreme] Court’s resolutions aim at unifying the legal opinions of the Civil and Criminal Divisions and providing a reference for each division to handle cases. They are not binding and are different from this Court’s precedents, which have been reported to the Judicial Yuan for examination and have the nature of judicial interpretations.¹⁷

Accordingly, when judges of courts at all levels use the conference resolutions of the Criminal Divisions of the Supreme Court,¹⁸ it is done based on the principle of adjudicatory independence. The judges consider the content of the conference resolutions appropriate and thus cite them to increase the persuasiveness of the reasons for their adjudications. They do not cite these resolutions for any normative binding force.¹⁹ Of course, an upper-level court cannot revoke the original judgment rendered by a lower-level court solely because it incorrectly cites or does not refer to a criminal conference resolution. Although the conference resolutions of the Criminal Divisions of the Supreme Court are not legally binding, most are followed and applied by courts at all levels in order to avoid having their cases revoked.

5. Discussions of Legal Issues

When handling cases, if courts have different opinions about the application of law or any other legal issues, they can, as “proposing organs”, raise legal questions to the High Court. The High Court then invites one presiding judge of the Supreme Court, various representatives of the District Courts, prosecutors’ offices, and the Taiwan High Court and its different branches, as well as lawyers and professors, to participate in deliberations over the legal issues raised, thereby generating discussion opinions, examination opinions, and results of the deliberations. The focus of the discussions is to find the best solution that complies with social justice and to resolve the dispute through debates by the best minds of the legal world, so as to provide a reference for judges as they handle specific cases and to increase the predictability and

¹⁶ See 《最高法院决议汇编：中国民国 17 至 95 年》 (*Compilation of the Supreme Court’s Resolutions: From the 17th to the 95th Years of the Republic of China*), Preamble, at 1.
¹⁷ *Id.*, Preamble, at 2.
¹⁸ Currently, the Supreme Court has twelve Criminal Divisions.
¹⁹ See 黄建荣 (HUANG Jianrong), *supra* note 10, at 85.
consistency of judgments. Whether or not a judge cites an opinion from these discussions still depends on his or her knowledge and understanding of the case; [s/he] should use the opinions appropriately as a reference for the reasoning process of his or her adjudication. And again, of course, an upper-level court cannot revoke the original judgment rendered by a lower-level court and remand the case for retrial solely because the adjudication is not made in accordance with the discussion opinions from these deliberations of legal issues.

III. Problems Facing Taiwan’s Criminal case system

Judges of criminal courts can refer to the above-mentioned cases when they consider how to apply the law during adjudication. However, as previously explained, with the exception of the interpretations of the Justices of the Constitutional Court, Judicial Yuan, and the precedents of the Supreme Court, both of which have binding force equivalent to that of legal decrees, other sources, such as the Supreme Court’s adjudications and resolutions and the discussions of legal issues, do not have any binding force. This section discusses two examples that illustrate anomalies that can arise in practice as a result of different understandings of the law. The section then explores methods for resolving the problem.

1. The Criminal Divisions of the Supreme Court Determine Confessions in Drug Trafficking Cases Differently

Drug trafficking cases are challenging both in the investigations conducted by prosecutors and police officers and in the adjudications handled by courts. Court judgments and the speed of the proceedings are affected by whether the defendants confess to drug trafficking. In order to encourage defendants of drug trafficking cases to confess so as to expedite criminal litigation proceedings, there are provisions that mitigate these defendants’ penalties if they confess their crimes during investigation and adjudication. The intention behind these provisions is undoubtedly good; however, if the courts apply different standards in determining whether confessions were made, defendants may take advantage of this opportunity, resulting in unfair outcomes.

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20 《100年法律座谈会汇编》(COMPILATION OF DISCUSSIONS OF LEGAL ISSUES OF 100 YEARS) 4 (台湾高等法院编印 (Taiwan High Court ed.), 2012).
21 Editor’s note: the term “自白” used in Taiwan has the same meaning as the term “自首” used in Mainland China. Both terms are typically translated as “confession” in English.
22 See, e.g., 《毒品危害防制条例》 (Drug Abuse Prevention Act), promulgated on June 3, 1955, amended most recently on Nov. 5, 2010, effective as of Nov. 24, 2010, available at http://law.moj.gov.tw/LawClass/LawContent.aspx?pcode=C0000008. Article 17 of the Act, as amended and promulgated on May 20, 2009, states: “A person who has committed a crime under Articles 4 through 8, 10, or 11, and confesses to the source of the drugs, resulting in the seizure of other principal offenders or accomplices, is to be given a mitigated sentence or exempted from punishment. A person who has committed a crime under Articles 4 through 8 and confesses during investigation and adjudication, is to be given a mitigated sentence.”
In a drug trafficking case, if a defendant confesses, during the investigation and adjudication, his or her intent to make a profit and his or her acts of drug trafficking and their targets, including price negotiation, the price received, and the delivery of drugs, the court can often promptly complete the litigation process and impose a reduced penalty on the defendant in accordance with the above-mentioned provisions. The buyer is usually not subpoenaed to testify in court.

However, defendants sometimes only admit communicating with someone to discuss the price, amount, and delivery location of the drugs and that, after the communication, they did deliver the drugs to that person and collect payment from him or her. But, the defendants claim, they merely helped another person to purchase the drugs and neither profited [from the transaction] nor had the intention to make a profit from the price difference. Has a defendant under such circumstances confessed to drug trafficking? Is commutation of the sentence allowed according to the above provisions?

The Criminal Divisions of the Supreme Court have different opinions about this issue. According to one Criminal Division:

> Whether or not there is an intention to make a profit is an important distinction between drug trafficking and drug transfers, or purchasing drugs for others and assisting drug use. This is also a reason for the difference in the severity of the penalty, and constitutes a significant element of the crime of drug trafficking [...]

If [the defendant] does not admit any intention of making a profit, then it is difficult to consider that a confession of trafficking heroin has been made. 23

Another Criminal Division opined:

> A confession means the affirmative admission of one’s crime in its entirety or the major part of it. As to how the law should be applied to the actions of a perpetrator, this is a type of legal evaluation that the court makes within its authority and on the basis of the facts that [the court] has determined. [...]

The defendant has admitted delivering drugs and collecting payment. Although he has also claimed that he made no profit, can such admission then not be considered a confession of the criminal act of drug trafficking? 24

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23 最高法院刑事第一庭之 101 年度台上字第 3272 号判决 (Criminal Division 1 of the Supreme Court’s 101st Year Tai Shang Zi No. 3272 Judgment). This case involved the trafficking of heroin. The same opinion can be found in 最高法院刑事第六庭之 101 年度台上字第 2523 号判决 (Criminal Division 6 of the Supreme Court’s 101st Year Tai Shang Zi No. 2523 Judgment) and 刑事第二庭之 101 年度台上字第 2039 号判决 (Criminal Division 2 of the Supreme Court’s 101st Year Tai Shang Zi No. 2039 Judgment).

24 最高法院刑事第三庭之 101 年度台上字第 2364 号判决 (Criminal Division 3 of the Supreme Court’s 101st Tai Shang Zi No. 2364 Judgment). The same opinion can be found in 最高法院刑事第十一庭之 99 年度台上字第 4962 号判决 (Criminal Division 11 of the Supreme Court’s 99th Year Tai Shang Zi No. 4962 Judgment).
These different opinions about confessions, held by different Criminal Divisions of the Supreme Court, have led to different adjudications. As a result, District Court judges and High Court judges use different criteria during adjudication because they cite different Supreme Court adjudications as references. This has not only caused differences in adjudications but has also affected the rights and interests of criminal defendants and the fairness of judicial justice. At present, the only way to address this unfairness is for the Supreme Court to first promptly hold a Criminal Divisions Conference to pass a resolution on this controversy for lower-level courts’ reference and then create a precedent with real binding force to achieve the goal of unifying application of law.

2. The Resolution of the Criminal Divisions Conference of the Supreme Court Concerning “Courts Should Investigate for Evidence in Accordance with their Authority”

Before its amendment in February 2002, Article 163 of the Criminal Procedure Act provided: “Due to the necessity to uncover the truth, courts should investigate for evidence in accordance with their authority.” Thus, even if the prosecutor did not fully carry out his or her responsibility to prosecute, the court still bore the responsibility to investigate for evidence; otherwise, the court’s judgment would likely be revoked by an upper-level court on the basis that the facts had not been ascertained. Under this system, the court seemed to continue the work of the prosecutor, causing others to mistakenly believe that the court and the prosecutor are one and the same institution.

With the 2002 amendment, the adversarial system has been strengthened to safeguard the neutrality of the courts. The investigation of evidence is now no longer wholly dependent on the courts; rather, the opinions of the parties are also considered. While the evidence collected by the court in accordance with its authority is supplementary and ancillary, the new Article 163 has a proviso in Item 2 that prescribes the circumstances under which the courts are expected to investigate for evidence: “[F]or matters involving the safeguarding of fairness and justice or matters that have important relationships with the interests of the defendant, courts should investigate for [evidence] in accordance with their authority.”

The issue as to when the courts “should investigate for evidence in accordance with their authority” is related to the determination of the defendant’s guilt. In particular, when the evidence adduced by the prosecutor is not completely clear, the defendant’s rights and interests are more dependent on the court’s attitude toward the case. Under these circumstances, the court may directly rule that [the defendant] is not guilty on the basis that the prosecutor has not fully satisfied his or her responsibility to prove the defendant’s commission of the crime. Alternatively, the court may inquire whether the prosecutor wishes to apply for the investigation of supplementary evidence and may also ask the opinions of the parties involved. Furthermore, courts may ask parties involved for their opinions before using their own authority to investigate for evidence. Of course, in these two alternative situations, the results of investigating for more evidence might turn out to be unfavorable to the defendants.
In 2012, the Supreme Court convened a conference and passed a resolution on the issue of when the courts “should investigate for evidence in accordance with their authority”:

The presumption of innocence is a universal value enshrined in the *Universal Declaration of Human Rights* and the *International Covenant on Civil and Political Rights*. It has also been interpreted by the Judicial Yuan as a fundamental human right safeguarded by the Constitution. [...] The prosecutor has the burden to prove that the defendant is guilty. Based on the principle of fairness in the courts, the courts are not obligated to carry out the prosecutor’s responsibility and use the courts’ authority to investigate for evidence. According to the proviso under Article 163, Item 2 of the *Criminal Procedure Act*, courts should investigate for evidence in accordance with their authority in matters involving the ‘safeguarding of fairness and justice’. These matters should be limited to those matters favorable to the defendants, as the interpretation of law is restricted by the purpose of the legislation. [If these matters are not so limited], the provision that the prosecutor should bear the burden of proof and the principle of the presumption of innocence would be contravened and this is tantamount to a reversion to the inquisitorial system, and is a departure from the idea of the overarching legal order.  

This conference resolution was criticized by prosecutors as soon as it was announced. Setting aside whether the opinions expressed in the conference resolution are sound and considering merely the actual operation, how can one ensure that investigations done by the courts using their authority are “limited to those matters favorable to the defendants”? In the case of the investigation for evidence, prior to examining the evidence and obtaining a result,

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25 最高法院 101年年度第2次刑事庭会议纪录 (Record of the Supreme Court’s 101st Year Second Criminal Divisions Conference), available at http://tps.judicial.gov.tw/faq/index.php?parent_id=589. The opposite opinion was also expressed at the conference:

[C]ases concerning the protection of significant legal interests of the country, society, and the individual, or those involving the realization of the overall purpose of law and upholding nationals’ sentiments towards the law are all significant matters involving the ‘safeguarding of fairness and justice’ . When the courts want to give supplemental value to the normative concept of ‘fairness and justice’, [the courts] must take into consideration the spirit of the law, the purpose of legislation, social circumstances, and the need to give [the concept] concrete details so as to ensure that the substance [of the concept] is appropriate. The purpose that criminal litigation desires to pursue is nothing more than the safeguarding of fairness and justice, namely, the discovery of the truth, which should include matters favorable or unfavorable to the defendant, […] the so-called [matters involving the] safeguarding of fairness and justice do not merely refer to those matters favorable to the defendant.

26 For example, Prosecutor WANG Qiming from the Taiwan Kaohsiung District Prosecutors Office expressed that this resolution not only was contradictory in reason and wrong in method, but also seriously infringed the legislative power and lacked democratic legitimacy. Also, on June 4, 2012, Prosecutor WU Xunlong from the Taiwan Penghu District Prosecutors Office held a sit-in protest of the matter in front of the Supreme Court.
how can one determine whether or not [the evidence] is favorable to the defendant? If at the
time when the court used its authority to investigate for evidence, it was believed that [the
evidence] would be favorable to the defendant, but the results of the investigation had the
opposite effect, how should the unfavorable evidence then be handled? Can the defendant claim
that that evidence should not be admitted [in court]?

The controversy arising from the aforementioned conference resolution has led to not
only dissatisfaction among prosecutors, but also perplexity among judges who actually handle
these cases about how to apply the resolution. Therefore, under these circumstances, judges
usually have two practices: (1) prior to investigating [for evidence] in accordance with [the
court’s] authority, they seek the opinions of the parties [involved]; (2) they ask the prosecutor or
the defendant whether they would like to apply for an investigation for [further] evidence. Even
so, there are judges who first investigate [for evidence] in accordance with the court’s authority
and then remind the parties [involved] to express their opinions on the evidence
collected. Currently, there are no data on how judges have cited and used this conference
resolution; after all, the resolution merely provides a reference for judges. In fact, there are no
cases where a judgment was revoked for violating the content of the conference resolution.

It is clear from the above discussion that while the Supreme Court’s conference
resolutions are opinions made by the Supreme Court to unify legal opinions of the Civil and
Criminal Divisions, judges of lower-level courts can still decide whether they apply [the
resolutions] based on the principle of adjudicatory independence. However, if the Supreme
Court’s conference resolutions are given an appropriate position or status in [Taiwan’s] legal
system, or are given a certain degree of binding force through practical operations or the creation
of precedents, then [the resolutions] can serve as another means of resolving controversy or
eliminating differences of opinion.

IV. Development Directions of Taiwan’s Criminal Case System and the Guiding Cases
System of the People’s Republic of China

The controversies and consequences arising from the aforementioned adjudications and
the conference resolution of the Supreme Court make it clear that handling criminal cases not
only concerns protecting the human rights of the defendant but also has great impact on the
safeguarding of social fairness and justice. How criminal cases are handled reflects a society’s
values, culture, humanistic thoughts, and social environment. The formulation, amendment, and
application of all laws are to adapt to the changes brought by these intertwined factors. While
protecting the human rights of defendants is undoubtedly important, in this complex society,
judges who handle cases also shoulder the responsibility of making a thorough inquiry into how
the courts can play an appropriate role in protecting the rights and interests of the silent public
and in manifesting social justice and fairness.

The establishment of the Guiding Cases System in the People’s Republic of China is
apparently aimed at seeking rules that can be discerned out of many complex cases and then
followed while striking a balance between social righteousness and the defendants’ rights and interests. There are similarities between the content of the GCs released by the Supreme People’s Court and that of the Taiwan’s *Compilation of Full-Text Precedents of the Supreme Court*. In the former, there are “Main Points of the Adjudication”, “Related Legal Rule(s)”, “Results of the Adjudication” and “Reasons for the Adjudication”. In the latter, there are “Main Points of the Precedents”, “Related Legal Rule(s)”, and the “Full Text of the Adjudication” (including the names of the parties, the main text, reasons, and applicable legal rules). The spirit of the precedent lies in the “Main Points of the Adjudication” in the case of the GCs and the “Main Points of the Precedents” in Taiwan’s Supreme Court precedents. They directly convey to the adjudicators the constituent elements of certain laws, the definition of certain nouns used in laws, and/or legal opinions of the cases. In Taiwan, if there are doubts about whether the “Main Points of the Precedents” should be applied, the reasons for the adjudication are the best reference to determine this. As for the GCs, it is still unclear which part(s) can be applied and cited.

The GCs and the *Compilation of Full-Text Precedents of the Supreme Court* have their differences. Unlike the GCs, the *Compilation of Full-Text Precedents of the Supreme Court* does not list the “Basic Facts of the Case” as a separate heading. Instead, it states the basic facts under the “Reasons” subsection and then explains whether the original adjudication (i.e., the adjudication of a High Court or its branches) erred in the application of law, reasoning, etc. The difference lies in the fact that the Supreme Court in Taiwan adjudicates questions of law only. It only examines whether there are errors in the application of law and thus its jurisprudence does not involve the identification of facts. Nevertheless, the Supreme Court in Taiwan, in remanding a case back to the second instance, namely, the High Court, often requires in its reasons for a particular adjudication that the second-instance court perform an investigation to clarify certain facts.

The Guiding Cases System is an important development for the People’s Republic of China. Through many years of hard work, Taiwan’s criminal case system has accumulated experience that is worthy of attention by the Supreme People’s Court of the People’s Republic of China. However, Taiwan’s criminal case system also has deficiencies. As discussed above, while the Supreme Court’s conference resolutions are opinions made by the Supreme Court to unify legal opinions of the Civil and Criminal Divisions, judges of lower-level courts can still not apply them. If some actual binding force, similar to that of the precedents of the Supreme Court or conference interpretations of the Justices of the Constitutional Court, Judicial Yuan, could be granted to appropriate or significant content of the Supreme Court’s conference resolutions through certain procedures or legal norms, it would significantly help safeguard the rights and interests of defendants and improve the economics of litigation. These are the author’s expectations for the future of Taiwan’s criminal case system. All of these experiences in Taiwan reflect the importance of ascertaining the actual binding effect of cases. If this direction is followed, GCs could soon become an important tool for unifying the application of law.