

Cite as: 11 NCTU L. REV., September 2022, at 95

**Prosecutors Shall Bear the Burden  
of Proof with the Obligation for  
Providing Clear Explanations of  
“Facts for Repeated Offending” and  
“Crimes that Should Be Aggregated”:  
Centered on “110 Year Taishang Dazi  
No. 5660” Ruling of the Supreme  
Court of Taiwan**

Jong-Yi Chiou<sup>\*</sup>

Abstract

Although the “modified adversary system” has been adopted by Taiwan’s criminal practice for a long while, somewhat extents of the “inquisitorial system” remain. In particular, the “inquisitorial system” still shadows matters disadvantaged to the defendant. Using a repeated offender as an example, in Taiwan’s judicial practice, it is believed that “facts for repeated offending” and “crimes that should

---

<sup>\*</sup> Judge, Supreme Court of Taiwan & Adjunct Associate Professor, School of Law, National Yang Ming Chiao Tung University; Ph.D., School of Law, National Yang Ming Chiao Tung University.

be aggregated” are basic matters that the court shall know for determining the facts and applying laws. Thus, it is believed that the court “shall” investigate these basic matters *ex officio*. However, the “110 Year Taishang Dazi No. 5660” ruling of the Supreme Court of Taiwan, which incorporated the judicial reform rationale given in “Judicial Yuan’s interpretation No. 755,” surprisingly stated that, regarding the above two basic matters for the repeated offenders, prosecutors shall bear the burden of proof with the obligation for providing clear explanations. Though this ruling may be merely a small step for the Taiwan Supreme Court to get rid of the “inquisitorial system”, it is enough to push the Taiwanese judicial reform to make a giant step.

**Keywords:** Modified Adversary System, Repeated Offending, Burden of Proof, Provide, Rule of Strict Proof