
J.Y. Interpretation No. 762 (March 9, 2018)*

The Right of a Defendant to Access Information in the Court Dossier Case

Issue

Is the first part of Paragraph 2 of Article 33 of the Criminal Procedure Code, which prevents a defendant from gaining timely access to all dossiers and exhibits in the case, unconstitutional?

Holding

[1] The first part of Paragraph 2 of Article 33 of the Criminal Procedure Code, stipulating that a *pro se* defendant may pay the required fees in advance to request copies of minutes in the dossier at trial yet which fails to provide a defendant with counsel the right to directly access information in the dossier, or a defendant with or without counsel the right to request copies of anything other than the minutes in the dossier, hinders the defendant from effectively defending the case. In this, the first part of Paragraph 2 of Article 33 of the Criminal Procedure Code is in contravention of the constitutional guarantee of due process under Article 16 of the Constitution. The authorities concerned shall amend the relevant provisions of the Criminal Procedure Code in accordance with the ruling of this Interpretation within one year from the date of issue of this Interpretation. Should the amendment not be completed in time, courts should, at the time of trial, follow this ruling by giving all copies of dossiers and exhibits to a defendant who requests them, after the necessary costs have been paid in advance.

[2] The petition for preliminary injunction is thus dismissed.

* Translation and Note by Ming-Woei CHANG

Reasoning

[1] The petitioner, Won-Xing CHU (hereinafter Petitioner 1), after being convicted by the Taiwan High Court, Tainan Branch, in Case Number 98 Chung Geng (4) 42, which is the final judgment, claimed that the final judgment made factual errors and so made a request to the Taiwan High Court, Tainan Branch, for copies of photos in the dossier to remedy the errors. However, the request was denied by the Tainan Branch Court in 105 Sheng 20. After appeal, the Supreme Court confirmed the holding of the case in 105 Tai Kang 205 (hereinafter the Final Ruling 1) by holding that, although a *pro se* defendant might analogically apply Paragraph 2 of Article 33 of the Criminal Procedure Code, which stipulates that “a *pro se* defendant may pay the necessary fees in advance to request copies of the minutes in the dossier at trial” (hereinafter Stipulation at issue), to request copies of the minutes in the dossier, however, because photos of the criminal case by their very nature are either documents or exhibits used as evidence, this request for photocopies of the photos in the criminal case did not conform to law, and therefore there was no cause for appeal.

[2] The petitioner, Chuan-Chung WANG (hereinafter Petitioner 2), the defendant in the Taiwan Taichung District Court criminal case Number 106 Yi 3060, requested that the Taiwan Taichung District Court provide the whole case dossier, including discs. Nonetheless, the request was dismissed by the district court in the final ruling 106 Yi 3060 on November 15, 2017 (hereinafter the Final Ruling 2), holding that a request for information, other than for the minutes in the dossier, filed by a *pro se* defendant did not conform to the Stipulation at issue. The court confirmed that no appeal could be lodged.

[3] Petitioners 1 and 2 claimed that Final Rulings 1 and 2, either applying or analogically applying, relevant provisions violated the right to litigate guaranteed by Article 16 of the Constitution, and then petitioned to this Court for a constitutional interpretation. This Court granted a review in accordance with the

requirements of by Article 5, Paragraph 1, Subparagraph 2 of the Act. The reasoning is as follows:

[4] Article 16 of the Constitution provides the people with the right to initiate litigation to ensure the right to a fair trial. According to due process of law, the right to complete defense includes protection of the access right to a fair trial (see J.Y. Interpretation No. 654). Hence, in criminal trials, a defendant is generally entitled to timely access to all necessary information related to any accusation against them in the dossier.

[5] The Stipulation at issue clearly provides that a *pro se* defendant may pay the necessary fees in advance to request copies of the minutes in the dossier at trial. It seems that only a *pro se* defendant may directly access information in the dossier (by requesting copies of the minutes). This excludes a defendant with counsel from making such a request, thereby limiting the scope of access to information in the dossier to the acquisition of copies of the minutes, rather than any other necessary information in the dossier, and only allowing the defendant to pay fees in advance to request copies of minutes. This does not allow a defendant to obtain the information in the dossier by perusing it and then either copying or photographing it or by any other means. Whether the subject, scope and method of the Stipulation at issue comply with the requirements of due process of law must be evaluated by a comprehensive judgment and affirmation of factors such as: the requirements for a full defense by the accused, the content touched upon in the case, the security of the dossier, whether or not there is an alternative process, and efficient use of judicial resources.

[6] First, regarding the subject's right to access, as the constitutional right to initiate litigation ensures the right to a full defense, a defendant, with or without counsel, should be entitled to directly access information in the dossier in person. Since the defendant personally experienced the relevant facts and may be in a better position than counsel to decide which information in the dossier might

defend the case effectively, permitting only counsel to examine the dossier is not a complete substitute for the right to access of the defendant. The Stipulation at issue, providing that a defendant with counsel might defend the case through examination of the dossier by the counsel (*see Legislative Yuan Gazette*, Vol. 96, No. 54, pp. 137-138), is in violation of the aforementioned due process of law under the Constitution, because the defendant with counsel would not be entitled to directly access information in the dossier.

[7] Second, concerning the scope of the right to access, all information in the dossier is important for the court to proceed to trial. Based on the constitutional concept of due process of law, a defendant is entitled to access to all information in the dossier to effectively defend the case. The Stipulation at issue, based on the reasoning that records and documents other than minutes in the dossier which may be used as evidence shall be investigated according to the law by the judge at trial so that the *pro se* defendant may have access to information therein (*see Legislative Yuan Gazette*, Vol. 96, No. 54, pp. 137-138), is in violation of the aforementioned due process of law under the Constitution, because the defendant would be entitled neither to timely access to all documents and exhibits other than the minutes, nor to comment on all related information other than the minutes in the dossier during the court investigation, which impedes an effective defense by the defendant.

[8] Last, in regard to the method of exercising the right to access, the Stipulation at issue, which is based on the view that “[b]ecause the defendant himself would closely be interested in the outcome of trial, directly allowing the defendant to access all information in the dossier might increase not only the cost of protection of the dossier but also the manpower required for safeguarding the defendant on the way to the court to examine the dossier should the defendant be in custody; thus the first part of Paragraph 2 of the article is newly adopted to protect the right to defense of a *pro se* defendant as well as to ensure an effective utilization of

judicial resources" (*see* Legislative Yuan Gazette, Vol. 96, No. 54, pp. 137-138) was reasonable at that time, in 2007, in not allowing the defendant to examine the dossier in person. However, given that the techniques of copying and the equipment to do so are now much more common, copies referred to in the Stipulation at issue should go beyond minutes and include duplicates (such as: photos of exhibits, copies of electronic records and e-files). Since copies play almost the same role as the originals do at trial, the Stipulation at issue providing that access to information in the dossier by paying for copies (which might reasonably be extended to duplicates) in advance constitutes no violation of due process, as it does not impede a defendant from effectively defending the case. Should it happen that the defendant be in a situation such that failure to examine the dossier leads to inadequacy in upholding the right to effective defense, it is certain that to protect the defendant's right to litigate under the Constitution, the defendant might at any time examine the dossier in a timely fashion either with the presiding judge present or with the designated judge's approval on the premise that the security of the dossier be ensured.

[9] To sum up, except for restrictions under the proviso of Paragraph 2 of Article 33 of the Criminal Procedure Code, the Stipulation at issue which deprives the defendant of the right either to directly access information or to request documents other than the minutes in the dossier impedes a defendant from effectively defending the case. The aforementioned Paragraph 2 of Article 33 of the Criminal Procedure Code is inconsistent with the meaning and purpose of Article 16 of the Constitution, which protects the right to litigate. The authorities concerned shall amend the relevant provisions of the Criminal Procedure Code in accordance with the ruling of this Interpretation within one year from the date of issue of this Interpretation. The court should follow this ruling to give all copies of dossiers and exhibits to a defendant (whether *pro se* or not) who requests them after the necessary costs have been paid in advance at the trial should the

amendment not be completed in time.

[10] The other claims also filed by Petitioner 2 that Article 27, Paragraphs 1 and 2, Articles 29 and 30, Article 31, Paragraph 1, Subparagraph 4, and Article 95, Paragraph 1, Subparagraph 3 of the Criminal Procedure Code, Articles 9 and 11 of the Attorney Regulation Act, Items 1 and 2 of the Notice of Request for Reviewing the Criminal Dossier, Article 5 of the Constitutional Court Procedure Act and Article 5, Paragraph 3, Subparagraph 2 of the Legal Aid Act are unconstitutional should be dismissed because those articles were not cited by Final Ruling 2,. The claim that Paragraph 1 of Article 33 of the Criminal Procedure Code is unconstitutional, as well as the petition filed by CHIANG Man-Na (the Assistant of Petitioner 2), claiming that the aforementioned article provides to the Assistant of Petitioner 2 no right to access information in the dossier, should also be dismissed according to Paragraph 3 of Article 5 of the Constitutional Court Procedure Act for not satisfying the requirements set out in Paragraph 1, Subparagraph 2 of the same Article, because the petitioner did not submit specific reasons for the formation of objective belief that the law is unconstitutional.

[11] Moreover, it is no longer necessary to rule on the petition for preliminary injunction filed by Petitioner 2, as the case has been completely interpreted. And given that the petition in the same case filed by Man-Na CHIANG is dismissed, it is no longer necessary to review the related petition for preliminary injunction. It shall also be dismissed.

Background Note by the Translator

Article 33 of the 1967 Criminal Procedure Code only granted defendants the right to counsel at the trial stage. Although its amendment in 1982 extended the right to counsel to the pre-trial investigatory period, prior to indictment, a criminal suspect, with or without counsel, was prohibited not only from reviewing

the dossier and exhibits but also from transcribing minutes and making copies and photographs thereof. In 2013, a former Taipei City councilor Lai Su-ru and her appointed counsel, Attorney Yi-Kwang LI, requested at her pre-trial detention hearing to examine the investigatory dossiers. However, her request was denied by the Taiwan High Court in the final ruling No. 102 Jen Kan 616. Defendant Su-Ru LAI then claimed the ruling was unconstitutional for wrongful application of Article 33, Paragraph 1 of the Criminal Procedure Code and thus requested constitutional review.

The Justices of the Judicial Yuan granted a writ of certiorari for the petition and then, in J. Y. Interpretation No. 737 on April 29, 2016, held it unconstitutional for the criminal suspect and his or her counsel to only have access to factual issues cited in the detention motion at the investigatory stage. In response to J. Y. Interpretation No. 737, the Legislative Yuan in 2017 revised Articles 93 and 101 of the Criminal Procedure Code and added Articles 31-1 and 33-1 to it as well. Following those changes, courts are obliged to appoint a public defender or attorney for the accused if he or she has not retained a defense attorney during the detention hearing of an investigation. Moreover, the defense attorney may inspect the dossier and evidence, as well as copy, or film, during a detention hearing proceeding of an investigation. And the court at the detention hearing should present a *pro se* defendant with the contents of the dossier and evidence by appropriate means.

However, according to Article 33, Paragraph 2, added in 2007, a *pro se* defendant at trial may pay the required fees in advance to request only copies of minutes in the dossier. It fails to provide a defendant with counsel the right to directly access information in the dossier. Compared with Article 33-1, added in 2017, the right to request copies of anything other than the minutes in the dossier at trial was denied by Article 33, Paragraph 2, Clause 1. Whether Article 33, Paragraph 2 of 2007 hindered the defendant from effectively defending the case

was challenged by the following Petitioners.

The Petitioner, Won-Xing CHU (hereinafter Petitioner 1), after his conviction by the Taiwan High Court, Tainan Branch was finalized, claimed that the final judgment made factual errors. To proceed with litigation for remedy, he made a request to the above court for copies of photos in the dossier. The request was denied by court ruling. After exhausting all available measures for seeking relief in appellate review against the ruling, Petitioner 1, on July 20, 2016, filed his petition to this Court for interpretation of the Constitution by arguing that the Clause 1 of Paragraph 2 of Article 33 of the Criminal Procedure Code, stipulating that a *pro se* defendant may pay the necessary fees in advance to request copies of minutes in the dossier at trial, as analogically applied in the final ruling, was in violation of the Constitution.

The Petitioner, Chuan-Chung WANG (hereinafter Petitioner 2), the defendant in Taiwan Taichung District Court Criminal Case Number 106 Yi 3060, submitted a request to the court for the whole dossier, including discs. This was dismissed, and the ruling became final because any interlocutory appeal is forbidden by law. After exhausting all available measures for seeking relief in appellate review, Petitioner 2, on December 12, 2017, filed his petition to this Court for interpretation of the Constitution by arguing that the Stipulation at issue applied in the final ruling was in violation of the Constitution. Petitioner 2 also petitioned for a preliminary injunction to suspend his case.

The abovementioned petitions regarding whether the relevant direct and analogical applications of the Stipulation at issue violate the Constitution were jointly reviewed by this Court.