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Prosecutor-General Yen Da-ho (□□□) has lodged an extraordinary appeal in a case involving former minister of transportation and communications Kuo Yao-chi (□□□).

Yen's main rationale for doing so is that according to judicial conditions, different courts might have different opinions as to what constitutes quid pro quo in corruption cases, so they might make inconsistent decisions on the issue, even when dealing with similar cases.

Parties involved in such cases have asked many times for such an appeal to be lodged, but their requests have been rejected each time, so it is puzzling that the prosecutor-general has agreed to do so in this case.

In situations where a civil servant is suspected of corruption, it is not enough for prosecutors to provide evidence to show that the accused has received benefits — they must also provide proof of a corrupt quid pro quo relationship.

Kuo is accused of having received bribes in relation to the bidding process for the refurbishment and management of Taipei Railway Station.

If all she received was tea, it could not be considered a quid pro quo exchange, because no matter how expensive the tea might be, it would still be completely out of proportion to the benefit that the bidder would gain by winning the contract.

Even if there really was US$20,000 in the tea canister, a synthetic judgement would have to be made based on the parties' subjective intentions, the objective situation and the benefits that would accrue from winning the contract, and in this respect it is unavoidable that different judges would treat the case differently.

The first and second-instance trials reached "not guilty" verdicts on the grounds that the money had not been found, or because there was no quid pro quo exchange that could constitute corruption.

However, after the Taiwan High Court remitted the case to a lower court for retrial, the lower court reached a different verdict, finding the defendants guilty.

The lower court's grounds for determining whether Kuo had received a bribe, ie, whether US$20,000 had been placed in the tea canister, was derived from a highly contentious and dubious wiretap.

Because the suspects had their telephones tapped for a long time, the law enforcement agencies must have gathered a large amount of information, but they only presented the parts that were unfavorable to the accused to support the allegations. Besides being fragments taken out of context, this was a kind of arbitrary selection.

Consequently, the evidence can only be hearsay and as such is scarcely admissible in court.

Regrettably, the court that conducted the retrial not only failed to disallow the evidence, but determined that the defendant had indeed received US$20,000, based on piecemeal snippets.

This is a case of failing to address the whole picture.

The other evidence upon which the court relied to find Kuo guilty was a statement made by the person who supposedly offered her the bribe.

However, his statement was made under conditions in which the investigator continually prompted him about the evidence.

The statement is also inconsistent and full of contradictions, as well as having been made under coaching by the investigators. As such, it has no evidential value.

Nonetheless, the judges were of the opinion that the witness bore no grudges against the accused and therefore had no reason to bear false witness against her.

They said the witness in the transcripts said something about wanting Kuo to pay attention to the tea, and on these grounds they determined that there must really have been money in the canister.

This line of thought reflects presumption of guilt and disregard for the rules of evidence, a problem that is widespread among judges.

The retrial court did not investigate in detail whether there was evidence of bribe-taking and did not deliberate on the matter of whether there was a quid pro quo relationship involving corruption.

The verdict therefore meets some of the conditions of Article 379 of the Code of Criminal Procedure (□□□□□), which lists various kinds of judgements that are automatically unlawful.

The relevant categories are: judgements where evidence to be investigated by the trial date is not investigated (Article 379, Paragraph 10) and those in which no reasons are specified (Article 379, Paragraph 14).

In such cases the prosecutor-general can lodge an extraordinary appeal even if the verdict has been confirmed.

Given the many flaws in the judgement against Kuo, why did the prosecutor-general turn down her request for an appeal several times and why has he agreed to it now?

One reasonable explanation might be a report the Control Yuan published last month after its

investigation into the case.

However, the problem with this explanation is that the reasons given for an extraordinary appeal seem to be little different from those that appear in the Control Yuan's investigation report, so why has there been a different outcome this time?

Could it be that Yen had not read the defendant's appeal requests in detail, or that he is afraid of being censured by the Control Yuan, or did he change his mind with an eye to the prevailing political wind?

One can but wonder. Beyond that, perhaps people should also consider whether a change is needed to the arrangement under which only the prosecutor-general has the power to lodge an extraordinary appeal.

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