Cautious Handling of Extraordinary Appeals Cases

Pursuant to Article 441 of the Code of Criminal Procedure, where the adjudication process in a case is found to be contrary to law after said judgment has become affirmed, the Prosecutor General of the Supreme Prosecutors Office may lodge a extraordinary appeal with the Supreme Court. This is an official power exclusive to the Prosecutor General, and is a remedy against affirmed criminal adjudication processes that are contrary to law, so as to ensure uniformity in application of the law and to protect the rights and interests of defendants.

The purpose of extraordinary appeals is to correct adjudication processes of originally affirmed judgments that are found to be contrary to law, and is distinguishable from retrials, where there is doubt as to whether the findings of fact made by the originally affirmed judgment are consistent with the objective facts, which is a remedy established for the benefit or detriment of parties receiving the judgment. Therefore, a extraordinary appeal should examine whether there is any error in application of the law, based on the facts affirmed by the original judgment and the criminal facts found by the original judgment, without further consideration questions of fact. If the application for remedy is grounded upon an erroneous finding of fact by the originally affirmed judgment, it would be inconsistent with the essential criteria for an application for extraordinary appeal and therefore cannot be made according to law. Nonetheless, this Office would still study such application cautiously, and would transfer the case to a first appeal prosecutor if the case were found to meet the conditions for a retrial.

Presently there are roughly five major sources for extraordinary appeals: firstly, when handling a petition or other cases involving the people, a prosecutor of this Office finds that the adjudication process for an affirmed criminal judgment by a court is contrary to law; the prosecutor therefore applies to assign the matter as a new case; secondly, prosecutors of prosecutor office below the High Court Prosecutor Office apply for extraordinary appeal, pursuant to Article 442 of the Code of Criminal Procedure; thirdly, the Ministry of Justice assigns a case for review; fourthly, the Control Yuan assigns a case for review; and fifthly, the people (private complainant, complainant or defendant) applies for extraordinary appeal. Amongst these, the greatest number of extraordinary appeals came from applications by people relating to the cases. Upon receiving the aforementioned applications, the Prosecutor General would instruct the prosecutors to call for the case files and study them carefully, and where there is indeed a ground for extraordinary appeal, the

extraordinary appeal would be lodged according to law. Where the application is ungrounded, the prosecutors would also set out in a response letter item-by-item the explanations for not being permitted to lodge a extraordinary appeal, other than paragraph 1, so as the applicant will understand.

The Supreme Prosecutors Office attaches great importance to all applications for extraordinary appeal. When handling such cases, a prosecutor would first call for the case files to review the case unless a case is clearly without merit. If the application were inconsistent with the statutory criteria for a extraordinary appeal, the prosecutor will provide a careful, item-by-item reply to the application; if the original judgment were indeed at fault, the prosecutor would prepare a brief of reasons for extraordinary appeal, submit the brief for approval by the Prosecutor General, and lodge a extraordinary appeal with the Supreme Court. In the majority of extraordinary appeal cases, it was only the litigation process that was contrary to law, and the Supreme Court judgment would revoke the part of the original judgment procedure that contravened the law. However, there is also a great number where the guilty judgment is revoked and the defendant is exonerated due to a legal violation by the original judgment, or where the original judgment is revoked and the case is remanded to the original court for re-adjudication in accordance with the procedure prior to the judgment. Extraordinary appeals are therefore extremely valuable to protection of human rights.

Statistics show a fluctuating trend in the number of extraordinary appeal applications received by this Office over the years. While the number of applications is large, less than 20% of these cases have met the statutory criteria for an extraordinary appeal to be lodged by the Prosecutor General. Of the extraordinary appeals lodged by this Office, nearly 80% of the original judgments were revoked by the Supreme Court (i.e., the extraordinary appeals were upheld), indicating that this Office's review procedure has been extremely rigorous. The rising trend of the Supreme Court upholding the extraordinary appeal opinions of this Office demonstrates that the caution exercised by this Office in handling extraordinary appeal cases has been particularly beneficial in correcting illegal judgments, establishing uniformity in legal interpretations, and protecting the rights and interests of the people.

Extraordinary Appeals Cases Handled by the SPO in Past 10 Years

Item / Year	No. Applications Handled	No. Applications for Extraordinary Appeal	Percentage of Extraordinary Appeal Cases	Percentage of Cases where Original Judgment is Revoked
2016	2348	242	10.4	80.0
2017	2648	274	10.4	86.8
2018	2453	273	11.2	82.3
2019	2666	292	11.0	84.5
2020	2515	239	9.6	82.8
2021	2773	179	6.5	77.9
2022	1983	166	8.4	80.9
2023	1882	146	7.8	81.5
2024	2075	218	10.8	82.7
2025	1945	230	12.3	83.6