

Prosecutors Considering Filing an Extraordinary Appeal to a Not Guilty 'Ballot-Flashing' Decision

The Taiwan High Court upheld a not guilty verdict to councilors who flashed ballots to show their votes in the city council's 2010 speaker election. The court asserted the video record file, obtained in violation of the procedure prescribed by the law, is not admissible as evidence, and the voting and balloting process in itself is not of a secret nature. The prosecutors respond as follows.

First, in previous cases, the Supreme Court has stated repeatedly that 'ballot-flashing' is in violation of Article 132 of the Criminal Code, since the voting and balloting process in itself is deeply concerned with national political and administrative policies. The prosecutors have long adopted the decisions to resolve similar legal dispute.

Second, the video record file was obtained for the purpose of perpetuation of evidence. The prosecutors were informed that some councilors might flash ballots to show their votes in the speaker election. To retain the evidence, the prosecutors instructed the police to collect evidence during the voting and balloting process. In light of the city council's autonomy, the prosecutors acquired consent of the secretary of the council in advance. Moreover, the councilors were fully aware of the fact that the voting and balloting process would be broadcast nationwide by the media. Therefore, the prosecutors have no intention to intervene, infringe or trespass each councilor's freedom to vote and speak.

Third, although the High Court's decision is final and cannot be appealed, the prosecutors will consider filing an extraordinary appeal. Since the decision has a profound influence on the admissibility of the evidence and rule establishment in future similar cases, the prosecutors would make a detailed study to examine whether the decision is against the law or precedents of the Supreme Court.