

In response to public anger about the sentence given to former Executive Yuan secretary-general Lin Yi-shih (林益世) for graft, the Taipei District Court collegiate bench called on people to set aside politics and focus instead on the law — but can the law be trusted?

The issue involves what is officially referred to as the action of an official in the discharge of their public duties and powers. In Taiwan, the convention had been to adhere strictly to the legal definition of public duties and powers, but during the Longtan corruption case involving former president Chen Shui-bian (陳水扁), the Supreme Court judges devised a new interpretation: “presumed actual influence.”

Since then, both legal concepts — the legal definition of public duties and powers and presumed actual influence — have been applied, depending on the nature of the individual case. In the graft case involving former deputy secretary-general to the Presidential Office Chen Che-nan (陳建南), for example, the Supreme Court applied both principles, first the legal definition, followed by “actual influence,” before delivering a guilty verdict.

In the Lin case, the collegiate bench looked at the charge of corruption, to “safeguard the general public’s trust in the ability of civil servants to execute the duties of their public office properly” and employed the principle of presumed actual influence. The judges talked at length to establish their reasons, attempting to mitigate the flaws in the Supreme Court’s argument, and came to the surprise conclusion that Lin exercised no actual influence in his public duties and powers when he approached the Ministry of Economic Affairs and pressured state-owned China Steel Corp (CSC) and CHC Resource Corp — which the ministry itself had influence over — to do what he wished.

Based on this, the bench rejected the contention that Lin’s behavior constituted corruption and therefore the possibility of finding him guilty of money laundering or expropriation as a result. Not only did Lin evade a stiff sentence for corruption, the other people involved in the case were found not guilty of money laundering and the state had to return the confiscated money.

Let us set aside for the moment the theoretical flaws and actual misuse of the principle of presumed actual influence. Since the judges chose to apply the principle of the legal definition of public duties and powers — the one most favorable for the defendant — the legal definition of the public duties and powers of legislators were understood, as indeed they always have

been, to include the powers of legislating, budgeting and monitoring, and oversight.

For example, former Chinese Nationalist Party (KMT) legislator Liao Fu-pen (廖福盆) and former Democratic Progressive Party legislator Chiu Chui-chen (邱垂辰) were both found guilty of corruption and imprisoned for accepting bribes from the National Chinese Herbal Apothecary Association. During the court proceedings it was accepted that the basis for prosecution was that the defendants had taken the money while carrying out their public duties and powers as legislators.

Also, former KMT legislator Ho Chih-hui (何智輝) was found guilty of corruption for skimming money from a land development deal in Tongluo (桶螺), Miaoli County, and for abusing his official powers as a legislator to pressure officials at the National Science Council.

It follows that the legal definition of public duties and powers for legislators include monitoring the activities and budgets of the economics ministry, which has influence over who is given senior positions within CSC and CHC, and on major policy decisions. Since the ruling in this case was based on the legal definition of public duties and powers, all of Lin's actions should have been understood in terms of this definition.

Indeed, was it precisely because of Lin's public duties and powers that he could do his "business" with Ti Yung Co owner Chen Chi-hsiang (陳其祥), from whom he demanded bribes? Incredibly, the collegiate bench seemed to overlook Lin's legislative duties and powers, blaming his behavior instead on his "thuggish tendencies."

Next, the collegiate bench acknowledged that after Lin had received the bribe he "asked" the economics ministry to pass on a memo and told Minister of Economic Affairs Shih Yen-shiang (施顏祥) when the two met in the legislature to "pay heed" to it. However, the judges interpreted Shih's failure to follow up on this as suggesting Lin was merely carrying out services to his constituents, and not carrying out his public duties and powers as a legislator.

If he was not acting as a legislator, why would he approach the minister about it at the legislature, or pass on the memo?

Judiciary inventive on corruption

Written by Lin Yu-hsiung 林郁興

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More importantly, whatever a public official chooses to do after receiving a bribe, whether the party doing the bribing was satisfied with the result or not, and whether the outcome was deemed successful, really has no bearing on the action of the official in the discharge of their public duties and powers. It certainly should not influence the conclusion as to whether corruption had taken place.

In the Chen Che-nan corruption case, the court did not even consider whether he had intervened having accepted the bribe, or even whether his intervention had been successful. Indeed, Liang Po-hsun (梁鵬生), who gave the bribe, only spoke out because it was unsuccessful. Nevertheless, the judges, having found that Chen's actions irrefutably constituted corruption, did not then deny that they were performed in the discharge of his public duties and powers.

Whether Shih actively complied with Lin's requests only touches upon the issue of whether Shih himself has a legal case to answer and it has nothing to do with the assessment of whether Lin accepted bribes. Perhaps someone can explain how Chen Che-nan could be found guilty of corruption for accepting a bribe and failing to follow through, when Lin did what he was bribed to do and yet got let off the hook.

Finally, looking back over the major corruption cases of the past few years, it does seem the courts have become a kind of creative workshop churning out new interpretations, the sheer inventiveness of each being more astounding than the last.

There was the "reservoir theory" espoused by President Ma Ying-jeou's (馬英九) lawyers when he was charged with corruption over the use of discretionary funds before he came to power; then there was the concept of "presumed actual influence" that put Chen Shui-bian behind bars in the Longtan case; and now we have this new invention in the Lin case, the improved version of the notion of actual influence.

What ingenious little piece of inventiveness will the courts come up with next? The suspense is killing me.

Lin Yu-hsiung is a professor in the College of Law at National Taiwan University.

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