



Summary of Judicial Decision

Sino Bright Enterprises Co. Ltd (“the Applicant”) v Secretary for Justice & others HCAL 1060/2017; [2019] HKCFI 2882

Decision : **Application for judicial review dismissed**
Date of Hearing : **4 July 2019**
Date of Judgment : **29 November 2019**

Background

1. The Applicant is a major creditor of a listed company. It lodged various complaints to the Police against the Provisional Liquidators of the company. By way of judicial review, the Applicant challenged the decision of the then Secretary for Justice (“SJ”) made in October 2017 (“the Decision”) in which he decided not to prosecute the Provisional Liquidators in relation to two counts of agent soliciting an advantage, contrary to section 9(1) of the Prevention of Bribery Ordinance, Cap. 201, and one count of blackmail, contrary to section 23 of the Theft Ordinance, Cap. 210.

Issues in dispute

2. Whether the SJ has failed to provide adequate reasons to support the Decision (“Ground 1”)
3. Whether the Decision is irrational, if not perverse (“Ground 2”).
4. Whether the SJ has failed to act in accordance with the Prosecution Code, which rendered the Decision illegal (“Ground 3”).

Department of Justice’s Summary of the Court’s rulings

(full text of Court of First Instance’s judgment at https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=125751&QS=%2B&TP=JU)

5. The starting point is that a prosecutorial decision of the SJ is generally not amenable to judicial review. Following the resumption of sovereignty in 1997, Article 63 of the Basic Law provides that “*The Department of Justice of the Hong Kong Special Administrative Region shall control criminal prosecutions, free from any interference*”. The control in criminal prosecutions encompasses the making of prosecutorial decisions of whether or not to prosecute. (Paragraphs 26 to 30)
6. In the landmark case of *RV v Director of Immigration* [2008] 4 HKLRD 529, Hartmann J held that the SJ’s control of criminal prosecutions is a constitutional power and must therefore be exercised within constitutional limits. On a true construction of the Basic Law, the courts have jurisdiction to judicially review the SJ’s power to control criminal prosecutions and to determine whether or



- not he/she had acted within the limits of his constitutional power. (Paragraphs 33 and 34)
7. The role of the SJ must not be reduced to *“that of an ordinary administrator”* and that the circumstances justifying judicial encroachment *“must be truly exceptional and must demonstrate that the Secretary has acted outside of his very broad powers”*. (Paragraph 38)
 8. Although the *“truly exceptional”* circumstances Hartmann J referred to in *RV* are not stated to be exhaustive, its ambit must be narrowly confined. Classic judicial review grounds such as irrationality and illegality cannot, without more, constitute *“truly exceptional”* circumstances which warrant a judicial review of a prosecutorial decision. This is also confirmed in the decision of *Kwok Cheuk Kin v Secretary for Justice* [2019] HKCFI 2215, HCAL 2882/2018. (Paragraphs 36 to 38)
 9. It is clear that the instant application does not involve any *“truly exceptional circumstances”* so that the SJ’s prosecutorial decision is vitiated on constitutional grounds. The application for judicial review should be dismissed on this ground alone. (Paragraphs 43 to 45)
 10. In any event, there was no merit in any of the three grounds of challenge. (Paragraphs 48 to 71)
 11. On Ground 1, there is no general positive duty on the SJ’s part to provide reasons for prosecutorial decisions. The very limited intervention available to challenge prosecutorial decisions of the SJ obviates the necessity to disclose reasons. (Paragraphs 49 to 55)
 12. On Grounds 2 and 3, the Court held that the Applicant had failed to show that the analysis of the advising counsel was in any respect erroneous or that the SJ had not acted in accordance with the Prosecution Code. (Paragraphs 56 to 71)

**Prosecutions Division
Department of Justice**

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