



LegCo President's Decision on Member's Bill

Rule 51(4) of the Rules of Procedure Offences against the Person (Amendment) (Extra-territoriality) Bill 2019

Since September 2018, the President of the LegCo ("President") has made one decision under Rule 51(4) of the LegCo Rules of Procedure ("RoP"). On this occasion, the President ruled that the Bill concerned related to Government policies and hence could not be introduced without the written consent of the CE. A summary of the ruling of the President on the Member's Bill is provided below.

Rule 51(4) of the RoP provides that in the case of a bill which, in the opinion of the President, relates to Government policies, the written consent of the CE is required for its introduction.

This decision was made on 27 June 2019 in respect of the Offences against the Person (Amendment) (Extra-territoriality) Bill 2019 ("the Bill") proposed by Hon Alvin YEUNG. The Bill sought to amend the Offences against the Person Ordinance (Cap. 212) to make provision for extra-territorial effect of offences related to homicide and serious offences against the person. According to the relevant LegCo Brief, the Bill would empower the HKSARG and the Hong Kong judiciary to deal with Hong Kong permanent residents (and individuals who ordinarily reside in Hong Kong) who are suspected of criminal behaviour relating to murder, manslaughter and attempt to murder in regions with which Hong Kong has not signed

any extradition or mutual legal assistance in criminal matters agreement, so that the relevant investigation, prosecution and trial can be conducted under Hong Kong law and judicial procedures. The proposed amendments in the Bill were similar to s. 153P of the Crimes Ordinance (Cap. 200) under which Hong Kong has extra-territorial jurisdiction over some sexual offences committed outside Hong Kong.

The Government submitted that the Bill related to Government policies and would bring fundamental changes to Hong Kong's criminal law, system and policies. The Government pointed out that under Cap. 212 and the Criminal Jurisdiction Ordinance (Cap. 461), there is no extra-territorial effect over offences related to homicide and serious offences against the person. Hong Kong is a common law jurisdiction adopting the "territoriality principle" in respect of criminal jurisdiction, and generally such jurisdiction will apply only when the whole or part of a criminal act takes place within the territory.

The Government also submitted that Hong Kong courts would be empowered to exercise extra-territorial jurisdiction only in special circumstances such as performing certain international obligations. For instance, the legislative intent of s. 153P of Cap. 200 is to combat child sex tourism as an initiative to fulfil the requirements of the United Nations Convention on the Rights of the Child applicable to Hong Kong.

Hon Alvin YEUNG disagreed with the Government's views. Hon YEUNG submitted that the Bill did not intend to redefine any offence or introduce any new offence but merely sought to extend Hong Kong's extra-territorial jurisdiction over offences related to homicide and serious offences against the person, and that was purely a legal issue and not related to Government policies.



The President opined that in order for a bill not to be caught by Rule 51(4) of the RoP, the bill must not have substantive effect on Government policies. On the term “Government policies”, the President adopted the interpretation that “Government policies” are those that have been decided by CE or CE in C under BL 48(4) and 56, including Government policies that have been implemented through legislation. Hence, policies reflected in legislation are also Government policies for the purposes of RoP 51(4).

The President noted that, based on the common law principle applicable in Hong Kong, courts in Hong Kong normally only have jurisdiction over criminal offences committed within the territorial jurisdiction of Hong Kong. Hence, unless otherwise provided in legislation, offences under the laws

of Hong Kong do not have extra-territorial effect. There are also instances where the application of extra-territorial criminal jurisdiction to certain offences has been necessitated by Hong Kong's fulfilment of obligations as required by international conventions.

The President was of the view that the Bill would have substantive effect on the existing Government policies on adopting the “territoriality principle” in respect of criminal jurisdiction and the scope of exercising extra-territorial criminal jurisdiction as reflected in the relevant legislation.

The President ruled that the Bill related to Government policies within the meaning of Rule 51(4) of the RoP and the written consent of the CE was required for its introduction.

