

LCQ19: Extraterritorial effect of the Criminal Procedure Ordinance

Following is a question by the Hon Mrs Regina Ip and a written reply by the Secretary for Security, Mr John Lee, in the Legislative Council today (January 6):

Question:

Mr Hui Chi-fung, who has resigned from the office of a Legislative Council Member, was earlier charged with nine criminal offences and granted bail by the court pending trial. In early November of last year, Hui applied to the court for return of his passport on grounds of overseas duty visit and the application was approved. On December 3, Hui announced in Denmark that he had gone into exile. On December 8, a Danish politician openly admitted that he had sent a fake invitation letter to Hui for an overseas duty visit in order to assist him in going into exile, and the visit itinerary was fabricated by him with the assistance of several Danish politicians. In this connection, will the Government inform this Council whether the Department of Justice has studied if section 89 of the Criminal Procedure Ordinance (Cap. 221) (which provides that: any person who aids, abets, counsels or procures the commission by another person of any offence shall be guilty of the like offence) may be invoked to institute prosecutions against these Danish politicians; if it has studied and the outcome is in the negative, of the reasons for that; if the reasons include that the provision has no extraterritorial effect, whether the Government will consider amending the provision for this purpose; if so, of the details; if not, the reasons for that?

Reply:

President,

In consultation with the Department of Justice (DoJ), the reply to the Member's question is as follows:

Hui Chi-fung is an absconder who has openly jumped bail. He was prosecuted for being suspected to have committed various offences in Hong Kong, including criminal damage, access to computer with dishonest intent, administering to any other person noxious thing with the intent to injure, aggrieve, or annoy such person etc. which amount to nine offences. An offender who fabricates false reasons and lies to the court in an attempt to abscond adds to the severity of his crime. Escaping from court trial by jumping bail and running away after breaking the law, and using such self-deluding excuse of the so-called "going into exile" to shift his responsibility and deceive others, are shameful and hypocritical acts of a coward.

The Government strongly condemns any attempt seeking to evade legal liabilities. Persons who are wanted for prosecution of offences and have absconded from Hong Kong are fugitive offenders. The Hong Kong Special Administrative Region Government will hold all fugitive offenders criminally responsible and make them face the sanctions of the law. In light of the circumstances of each case, the Police will track down the whereabouts of the fugitive offenders through various means in accordance with the law and pursue them.

As the case mentioned in the question is still under investigation, it is not appropriate for us to discuss the details of the case. Wherever any person (including foreign politicians) is suspected of having committed the crime for organising, planning or aiding the abscondence, the Police will actively investigate and pursue their legal liabilities under the existing legal framework.

Section 89 of the Criminal Procedure Ordinance (Cap. 221) stipulates that any person who aids, abets, counsels or procures the commission by another person of any offence shall be guilty of the like offence. On the other hand, section 159A of Crimes Ordinance (Cap. 200) provides for the offence of conspiracy. As supported by the relevant case law, the offence may cover such circumstances as that if a person has made a conspiracy agreement outside Hong Kong and the course of conduct under that agreement involves committing a substantive offence triable in Hong Kong, that person, if subsequent in Hong Kong, could be prosecuted in Hong Kong for allegedly committing the offence of conspiracy.

The offence(s) to be charged in each case would depend on the actual evidence and facts of that case and cannot be generalised. As in all criminal cases, the DoJ will, according to the information provided by the Police upon investigation, decide independently in strict accordance with evidence, applicable laws and the Prosecution Code on whether or not to prosecute and consider the applicable charge(s).