

SJ: Judicial independence intact

Despite some controversies concerning fundamental rights and freedoms, prosecutorial decisions or political issues since July 1, 1997, it is internationally recognised that judicial independence is intact and the rule of law robust in Hong Kong, the Secretary for Justice, Ms Elsie Leung, said in London yesterday (January 24).

Ms Leung was addressing a luncheon meeting of the Hong Kong Association on the legal aspects in the implementation of one country, two systems in the Hong Kong Special Administrative Region.

Dignitaries in the audience included the former UK Foreign Minister Lord Howe, former Hong Kong Attorneys General Mr Michael Thomas and Mr Jeremy Mathews; former Senior ExCo Member Baroness Lydia Dunn; Liberal Democrat peer Lord Thomas; HK Court of Final Appeal Non-permanent Judge the Hon Mr Justice Barry Mortimer; former UK Lord Chancellor Lord Irvine and the President of the China Britain Business Council, Lord Powell.

Ms Leung said that so far as rights and freedoms were concerned, the guarantees in Hong Kong's Basic Law were not empty promises. "They are enforceable through Hong Kong's fiercely independent judiciary," she said.

Ms Leung said that each year since reunification with China, there had been significant constitutional litigation covering issues such as the right of abode, freedom to travel and freedom of expression.

"The courts have been vigilant in giving a broad interpretation of provisions guaranteeing fundamental human rights, and in giving a narrow meaning to permissible restrictions," she said.

Ms Leung said that the number of applications for judicial review had risen sharply in recent years in untrodden areas of the law, in the early stage of the interface between the Basic Law and domestic legislation, and following the world trend since the Second World War that the exercise of discretion by government departments was more readily challenged.

"Although most of the time the Government's authority has been re-affirmed through such proceedings, there were occasions when the courts held against the government on the constitutionality of legislation or the exercise of discretions," she said.

Ms Leung noted that "Article 84 of the Basic Law particularly states that, in the adjudication of cases, the courts may refer to precedents of other common law jurisdictions. This enables us not only to maintain our legal system, but also to continue to develop it.

"Since reunification, some of the judgments in our Court of Final Appeal have been cited by the judiciary of other jurisdictions," Ms Leung said.

She added that despite the misunderstanding of the interpretation of the Basic Law by the Standing Committee of the National People's Congress, our courts enjoyed a good reputation for being independent.

"This is not surprising because judicial independence is guaranteed not only by Article 85 of the Basic Law, but also by the whole system of appointment of judges, provision for security of tenure etc. We rely upon the system and not only individual judges for upholding the rule of law and judicial independence," Ms Leung said.

She added that the development of the legal system also depended on the expertise of lawyers, including practising members of the Bar, solicitors and Government Counsel.

"To provide a benevolent infrastructure for the development of the legal profession, the government spares no effort in promoting Hong Kong as a regional legal services centre and assisting Hong Kong lawyers to gain entry into the Mainland market under the scheme of Closer Economic Partnership Arrangement between Mainland and Hong Kong (CEPA).

"With a strong independent legal profession, the legal system will continue to develop healthily, and in turn, it will ensure that the rule of law will be maintained," Ms Leung said.

After the luncheon meeting, Ms Leung called on Rt Hon Lord Falconer, QC, Secretary of State for Constitutional Affairs and Lord Chancellor, at the House of Lords.

This was followed by a meeting with Rt Hon Lord Goldsmith, QC, Attorney General, at the House of Commons.

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