

LCQ4: Prosecution work relating to "Occupy Movement"

Following is a question by the Hon Junius Ho and a reply by the Secretary for Justice, Mr Rimsky Yuen, SC, in the Legislative Council meeting today (February 8):

Question:

In reply to a question raised by a Member of this Council on March 2 last year, the Government advised that during the "Occupation Movement" in 2014, a total of 1 003 persons were arrested by the Police for various alleged offences. As at January 31 last year, 216 persons (accounting for about 22 per cent of the arrested persons) had to face judicial proceedings; 182 persons had their judicial proceedings completed, and amongst them, 116 persons (accounting for about 12 per cent of the arrested persons) had to bear legal consequences. Of these 116 persons, 74 were convicted (accounting for about 34 per cent of the persons who had to face judicial proceedings) and another 42 were bound over. There have been public comments that the prosecution work carried out by the Department of Justice (DoJ) has been progressing slowly, and the relevant prosecution and conviction rates are also rather low. In this connection, will the Government inform this Council:

(1) whether DoJ has encountered any difficulties in carrying out the aforesaid prosecution work; if DoJ has, of the details; of the measures which may expedite DoJ's prosecution work; whether DoJ has formulated a timetable for completing those remaining cases in respect of which prosecutions have not been instituted; if DoJ has, of the details;

(2) of the latest prosecution and conviction rates pertaining to the aforesaid arrested persons; the latest number of convicted persons, with a breakdown by the category of the

penalties imposed on them (including imprisonment and community service orders) and by the gravity of such penalties; and

(3) of the progress of the prosecution work against the three initiators and other instigators of the Occupation Movement?

Reply:

President,

The "Occupy Movement" is an important incident in the history of Hong Kong. The Department of Justice (DoJ) fully understands the concern of the Hong Kong community as to how the criminal liability of those who had been suspected of unlawful conduct during the "Occupy Movement" should be dealt with. As a matter of fact, DoJ and the Police have all along been actively following up the cases, with a view to dealing with the relevant matters appropriately.

Before responding to the three specific questions raised, it is necessary to clarify certain basic concepts. I notice that at the beginning of his question, the Hon Junius Ho set out and made comparison of the number of persons who were arrested, prosecuted, convicted or bound over. I am afraid that such comparisons provide no reference value or may even lead to misunderstanding. This is because, under the legal system of Hong Kong, different standards are adopted when the Police effect arrests, when DoJ decides on whether prosecution should be commenced, and when the Court decides on the criminal responsibilities of the defendants:

(1) According to section 50 of the Police Force Ordinance (Cap. 232), police officers are entitled to effect arrest of the person concerned if they have reasonable suspicion;

(2) DoJ makes prosecution decisions in accordance with the principles set out in the Prosecution Code. Unless there is sufficient admissible evidence so that the case has a reasonable prospect of conviction, and that it is in the public interest to prosecute, no prosecution should be commenced.

(3) Judges, on the other hand, will only convict if the offence is proved beyond reasonable doubt.

Due to such differences in the standards adopted, the mere fact that an arrested person is not charged does not necessarily mean that the Police have made a wrongful arrest; nor does it necessarily follow that the prosecutors have failed in their duty by not prosecuting. Similarly, since a higher standard is adopted by the court when deciding whether to convict as compared to the standard adopted in commencing prosecution, and that there may often be developments which prosecutors could not possibly foresee or control during the trial process, the mere fact that some of the defendants were acquitted does not necessarily mean that there was any error in respect of the decision of effecting arrest or commencing prosecution.

In respect of parts (1) and (3) of the Hon Junius Ho's question, the consolidated response of DoJ is as follows:

The questions of criminal liability arising from the "Occupy Movement" have indeed brought about considerable challenges. Apart from the prosecution work that would otherwise have to be dealt with, the Prosecutions Division of DoJ also has to handle at the same time the substantial number of cases involving possible criminal conduct that had taken place during the "Occupy Movement".

From around December 2014, colleagues of the Prosecutions Division started to communicate or have

working meetings with the Police to provide legal advice so as to assist the Police in their work of investigation and evidence gathering, etc. During this period, DoJ decided in appropriate circumstances how to deal with the specific cases of which investigation had been completed, including commencing judicial process against 216 persons.

Furthermore, up to August last year, the Police submitted in respect of 287 other arrested persons a total of about 335 investigation reports, 300 witness statements, 130 hours of video recordings and about 80 items of non-video exhibits. After detailed consideration of the materials provided by the Police and the relevant legal issues, DoJ had provided further detailed written legal advice to the Police at the end of last year in respect of those aforesaid 287 arrestees, including cases involving those who were suspected to have performed a leading role. As DoJ understands, the Police are following up on the legal advice given by DoJ. As the relevant criminal procedures are still on-going, it is not appropriate for us to make further specific comments at this stage.

As the number of arrested persons is large and the volume of evidence involved is substantial, colleagues of the Prosecutions Division have to spend substantial time to study and examine the relevant materials and possible legal or technical issues. For instance, colleagues concerned have to take a long time to go through the video evidence, consider admissibility and other questions relevant under the law of evidence, analyse the specific circumstances of each and every incident, and provide legal advice on the appropriate manner to handle each relevant person. Moreover, unless the relevant incidents could be handled on their own, the numerous incidents involved in the "Occupy Movement" are often inter-connected, rendering it impossible to handle individual arrestees separately. Quite the contrary, it is necessary for DoJ to consider the cases of numerous arrestees in a comprehensive and holistic

manner.

In order to achieve better efficiency in the handling of cases related to the "Occupy Movement" and with a view to ensuring consistency of approach, on the basis of an existing dedicated team of prosecutors responsible for handling public order event cases, DoJ set up a dedicated team in early 2015 to handle cases related to the "Occupy Movement", with members from different relevant units led by the prosecutors of the original group handling public order event cases.

In respect of part (2) of the question, the response of DoJ is as follows:

During the "Occupy Movement" in 2014, a total of 955 persons were arrested by the Police for various alleged offences, and another 48 persons were arrested by the Police after the incident. As at January 31, 2017, a total of 216 arrestees have undergone or are undergoing judicial proceedings. Amongst them, 123 persons have to bear legal consequences (i.e. 81 who were convicted and 42 who were bound over).

The convictions include unlawful assembly, arson, possession of offensive weapon, criminal damage, wounding, assaulting police officer, common assault, possession of imitation firearms, theft, criminal intimidation, indecent assault, possession of dangerous drugs, and possession of Part I poisons, etc. The penalties of convicted persons include imprisonment from two days to 10 months, probation order of 12 to 15 months, community service order of 80 to 180 hours, treatment in drug treatment centres, and fine of \$300 to \$6,000.

President, DoJ will continue to follow up on the issue of criminal liability in respect of the "Occupy Movement", and will also uphold its constitutional responsibility in handling

the prosecution work concerned in an impartial,
professional and apolitical manner.

Thank you.

Ends/Wednesday, February 8, 2017