

LCQ1: Prosecution work of the Department of Justice

Following is a question by the Hon Luk Chung-hung and a reply by the Secretary for Justice, Ms Teresa Cheng, SC, in the Legislative Council today (December 11):

Question:

The cumulative number of persons arrested, since June this year in relation to the disturbances arising from the proposed legislative amendments, is as high as several thousands, with some of them being, one after another, charged with the relevant offences. On the 4th of last month, when a case involving five defendants was brought before the Eastern Magistrates' Courts, a misnomer for one of the defendants and inconsistency in the Chinese and English versions of the charges were uncovered in the consent to prosecution of the Department of Justice (DoJ). As a result, the prosecution had to withdraw the charges against all the defendants. Later on, the DoJ instituted prosecutions against them afresh. Regarding the prosecution work of the DoJ, will the Government inform this Council:

(1) of the number of cases in each of the past five years in which the trial processes were affected by errors made

by the prosecutors, and the details of such errors; the number of cases in which the trials were discontinued, the number of defendants who were released by the court unconditionally, and the number of convicted persons who were imposed a more lenient punishment, as a result of such errors;

(2) whether the DoJ has reviewed the causes of the prosecutors' making such errors so as to avoid the recurrence of such errors; if so, of the details; if not, the reasons for that; whether the officers concerned were subject to any disciplinary actions; if so, of the details; if not, the reasons for that; and

(3) whether, in order to cope with the increasingly heavy prosecution workload brought about by handling the cases relating to the disturbances arising from the proposed legislative amendments, the DoJ has examined the employment of additional manpower and measures for expediting prosecution work; if so, of the details; if not, the reasons for that?

Reply:

President,

The rule of law is the core value of Hong Kong. A criminal justice process includes investigation, prosecution, defence, adjudication and punishment, of which prosecutors carry out their roles as an integral part of it. When conducting prosecutions, a prosecutor is required to comply with and promote the rule of law, fairly and objectively assisting the court to arrive at the truth and to do justice in accordance with the law. Professional, impartial and independent prosecution work is pivotal in safeguarding the rule of law in Hong Kong.

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”. Prosecutors of the Department of Justice (DoJ) always shoulder the constitutional duty enshrined therein.

The Prosecution Code (the Code) compiled by the DoJ provides reference points and guidance for prosecutors in prosecution work. It states that the responsibility of prosecutors is to apply the highest of professional standards in handling criminal cases. According to paragraph 1.2 of the Code, a prosecutor must not be influenced by any investigatory, political, media, community or individual interest or representation. In

making decisions of whether or not to prosecute, the DoJ must make an objective and professional assessment of the available evidence and applicable law, and act in accordance with the Code. Cases will not be handled differently owing to the political beliefs or background of the persons involved.

The Secretary for Justice, the Director of Public Prosecutions and the prosecution team have all along been discharging their prosecutorial duties fairly and without prejudice or favour in accordance with the above principles so as to safeguard criminal justice.

In relation to the Hon Luk Chung-hung's specific questions, the DoJ's detailed reply is as follows:

(1) The DoJ does not maintain the requested figures. Generally, when conducting prosecutions, including handling prosecution documents, prosecutors of the DoJ are required to handle all criminal cases professionally and in strict accordance with the law and the relevant guidelines in the Code.

Regarding the handling of the case mentioned at the Eastern Magistrates' Courts on November 4 this year, the DoJ had made submissions to the Court, which were

accepted by the Court. As the five defendants concerned have been immediately arrested and charged, and the relevant legal proceedings remain ongoing, it is not appropriate for the DoJ to comment further.

(2) The civil service performance management system for civil servants formulated by the Civil Service Bureau serves as an official mechanism to monitor and assess staff performance. Civil servants' performance is reflected in an honest, objective and comprehensive manner in their appraisal reports.

Where any act, conduct or behaviour of an officer is in breach of the Civil Service Code or government regulations, the department concerned will take appropriate follow-up actions in accordance with established procedures. If there is evidence upon investigation that a civil servant has misconducted himself, or a civil servant has been convicted of criminal offence by the Court, appropriate disciplinary action will be taken, including imposing disciplinary punishment of verbal warning, written warning, reprimand, severe reprimand, reduction in rank, compulsory retirement and dismissal, etc. The above mechanism is applicable to civil servants of different grades and ranks including prosecutors of the DoJ.

The Code also sets out the role and duties of prosecutors. DoJ's prosecutors have always discharged their prosecutorial responsibilities in accordance with the relevant principles and have at all times exercised the highest standards of integrity and care in maintaining proper administration of justice.

The DoJ attaches great importance to the professional qualities of prosecutors and provides them with continuing education and training. Moreover, the Prosecutions Division (PD) of the DoJ has established procedures to regularly remind all prosecutors of points to note. It also reviews and updates from time to time the approaches and procedures in handling criminal cases for enhancement of prosecution work.

(3) All criminal investigations are conducted by law enforcement agencies, which will, when necessary, refer cases to the DoJ for independent decisions on whether to prosecute. The DoJ at all times seeks to provide legal advice to law enforcement agencies, including the Police, as expeditiously as possible. The processing time from commencement of investigation to institution of prosecution for each case depends on various factors, such as the time required for investigation by law

enforcement agencies, the volume of evidence, and the nature and complexity of the case.

There are currently over 200 prosecutors in the PD of the DoJ. There has been a dedicated team of prosecutors within the PD for handling cases concerning public order events to ensure consistency in the handling approach. In view of the recent increase in the number of public order event cases, the DoJ has also arranged for officers who had formerly served in that dedicated team to assist in work relating to prosecutorial decisions. Subject to the overall operational needs of the PD, we do not rule out the possibility of introducing measures as necessary in the future such as deployment of additional manpower to handle relevant cases.

The DoJ will continue to maintain communications with the Police and to conduct its prosecution work in a fair, effective and efficient manner.

Thank you, President.

Ends/Wednesday, December 11, 2019