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Replies to supplementary written questions raised by Finance Committee Members in examining the Estimates of Expenditure 2020-21

Director of Bureau : Secretary for Justice

Session No. : 2

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CONTROLLING OFFICER'S REPLY

S-SJ001

(Question Serial No. S049)

Head: (92) Department of Justice

Subhead (No. & title): (000) Operational expenses

Programme: (2) Civil

Controlling Officer: Director of Administration and Development (Gracie Foo)

Director of Bureau: Secretary for Justice

Question:

1. The number of new proceedings brought against the Government increased from 2 174 to 3 372 over the past 2 years. Please provide in the table below the numbers of proceedings brought against government departments which were represented by the Department of Justice (DoJ) in the past 3 years.

New proceedings brought against government departments represented by the DoJ	2018	2019
(...)		
Total	2 174	3 372

2. Regarding the cases where the DoJ represented the Director of Architectural Services (DAS) in civil claims for damages brought by the DAS for disputes over public works contracts, please provide the numbers of cases, the outcomes of the proceedings (successful/unsuccessful/settled/pending) and the related expenses (court costs/amount of damages) in the past 5 years.

	Number of civil claims for damages brought by the Government for disputes over public works contracts	Outcome of proceedings				Related expenses	
		Successful	Unsuccessful	Settled	Pending	Court costs	Amount of damages
2015-16							
2016-17							
2017-18							
2018-19							
2019-20							

3. Regarding the cases where the DoJ represented the DAS in civil claims for damages brought against the DAS for disputes over public works contracts, please provide the numbers of cases, the outcomes of the proceedings (successful/unsuccessful/settled/pending) and the related expenses (court costs/amount of damages) in the past 5 years.

	Number of civil claims for damages brought against the Government for disputes over public works contracts	Outcome of proceedings				Related expenses	
		Successful	Unsuccessful	Settled	Pending	Court costs	Amount of damages
2015-16							
2016-17							
2017-18							
2018-19							
2019-20							

4. Please provide the case numbers of proceedings with unsuccessful outcome where the DoJ represented the DAS for disputes over public works contracts in the past 5 years.

Asked by: Hon CHU Hoi-dick (LegCo internal reference no.:)

Reply:

1. Regarding new proceedings brought against the Government, the Department of Justice (DoJ) does not maintain any breakdown of individual cases in relation to government departments.
- 2-4. Civil claims for damages arising from disputes over public works contracts involving government departments are normally handled by the Legal Advisory Division (Works) (LAD(W)) under the Works Branch of the Development Bureau. According to records for the past 5 years, neither the DoJ nor the LAD(W) has represented the Director of Architectural Services in any civil claims for damages arising from disputes over public works contracts.

- End -

CONTROLLING OFFICER'S REPLY

S-SJ002

(Question Serial No. S060)

Head: (92) Department of Justice

Subhead (No. & title): (-) Not Specified

Programme: (1) Prosecutions

Controlling Officer: Director of Administration and Development (Gracie Foo)

Director of Bureau: Secretary for Justice

Question:

It is stated in the reply that “where the Police has not sought legal advice for the cases concerned before instituting prosecution, the Department of Justice will, after careful consideration of the relevant evidence adduced by the Police, the facts, the applicable laws and the Prosecution Code, withdraw the prosecution if it sees no reasonable prospect of conviction on any charges basing on the overall evidence”.

Regarding the 551 criminal cases in relation to the recent social incidents, would the Administration please set out in table form the dates of arrest and prosecution in respect of the defendant(s) in each case, and whether the Police had sought legal advice before prosecution was instituted.

Asked by: Hon CHU Hoi-dick (LegCo internal reference no.:)

Reply:

The Department of Justice does not maintain any statistics on “criminal cases in relation to the recent social incidents”.

- End -

CONTROLLING OFFICER'S REPLY

S-SJ003

(Question Serial No. S036)

Head: (92) Department of Justice

Subhead (No. & title): (-) Not Specified

Programme: (1) Prosecutions

(2) Civil

Controlling Officer: Director of Administration and Development (Gracie Foo)

Director of Bureau: Secretary for Justice

Question:

Regarding the use of force by police officers which came to the knowledge of the Department of Justice, please advise on the following:

- (1) in respect of criminal cases, the number of cases in which the defendants complained in court about being treated violently by police officers;
- (2) how such cases are handled;
- (3) if the police officers involved in the complaints are prosecution witnesses, whether their statements will be taken into account before the complaints are handled.

Asked by: Hon HUI Chi-fung (LegCo internal reference no.:)

Reply:

- (1) The Department of Justice (DoJ) does not maintain such statistics.
- (2) The DoJ will refer such cases to the Complaints Against Police Office for appropriate follow-up.
- (3) According to Chapter 5 of the Prosecution Code, a prosecutor must consider 2 issues in deciding whether to prosecute. First, whether there is sufficient evidence to justify instituting or continuing prosecutions. The test is whether the evidence demonstrates a reasonable prospect of conviction. Second, if there is sufficient evidence, whether public interest requires the prosecution be conducted. In considering whether there is sufficient evidence to justify a reasonable prospect of conviction, a prosecutor must make prospective judgements about matters such as:
 - (a) the evidence available;
 - (b) any challenge that may be made to the admissibility and/or reliability of the evidence;

- (c) the availability, competence and credibility of witnesses, and their likely assessment by the court;
- (d) any contrary evidence that may reasonably be anticipated;
- (e) likely defences to be raised;
- (f) the way in which a reasonable tribunal of fact, properly instructed as to the law, will be likely to act on all of the evidence and arguments in the case.

Moreover, a prosecutor will need to consider in relation to witnesses: the reliability of memory; any suggestion of exaggeration; any association with the accused (favourable or unfavourable); any motive not to tell the whole truth; availability; psychological or other personal characteristics (including in the case of a child or incapacitated witness); vulnerability to attack by the defence.

- End -

CONTROLLING OFFICER'S REPLY

S-SJ004

(Question Serial No. S044)

Head: (92) Department of Justice

Subhead (No. & title): (-) Not Specified

Programme: (-) Not Specified

Controlling Officer: Director of Administration and Development (Gracie Foo)

Director of Bureau: Secretary for Justice

Question:

Last year, the Court of First Instance held that the Emergency Regulations Ordinance (ERO), which empowers the Chief Executive in Council to make regulations on any occasion of public danger, was incompatible with the Basic Law. The Prohibition on Face Covering Regulation (PFCR) made through the Government's invocation of the ERO was also ruled unconstitutional. The Department of Justice (DoJ) has since lodged an appeal, and the Court of Appeal will hand down its judgment on 9 April. Would the Administration inform this Committee of the following:

1. How many persons have been charged with contravening the PFCR since it took effect last October?
2. Of these persons, how many were charged with only one offence of contravening the PFCR?
3. If the appeal is unsuccessful, what are the estimated court costs that the DoJ will pay in compensation to the defendants charged with contravening the PFCR?
4. What are the estimated court costs in relation to the DoJ's appeal against the ruling on the PFCR?
5. If the appeal is unsuccessful, will the DoJ bring a further appeal to the Court of Final Appeal? If yes, what are the estimated court costs?
6. How many resources did the DoJ spend on studying the making of the PFCR by way of the ERO? What were the manpower and expenditure involved?

Asked by: Hon KWOK Ka-ki (LegCo internal reference no.:)

Reply:

- (1)&(2) According to the Security Bureau, as at 29 February 2020, 61 persons were charged with contravening the Prohibition on Face Covering Regulation (PFCR), of whom 3 were laid with alternative charges of unlawful assembly, obstructing a police officer in the execution of his duty, etc. The charged persons were generally alleged of committing other crimes such as unlawful assembly and rioting at the same time. Only 1 person was charged solely with an offence relating to the PFCR.
- (3)&(4) In working out the 2020-21 estimates, the Department of Justice (DoJ) has taken into account the court costs required for handling various cases. It is inappropriate for us to disclose the anticipated expenditure on court costs in individual cases as this may prejudice our position in on-going proceedings (e.g. by disclosing directly or indirectly our assessment of matters concerning those cases).
- (5) Regarding the decision in the case concerned, the DoJ will carefully study the judgment of the Court of Appeal before taking a decision on follow-up.
- (6) Since professional legal support regarding the Emergency Regulations Ordinance and the PFCR was undertaken by relevant staff among their other duties, the manpower and expenditure involved cannot be separately identified.

- End -

CONTROLLING OFFICER'S REPLY

S-SJ005

(Question Serial No. S048)

Head: (92) Department of Justice

Subhead (No. & title): (-) Not Specified

Programme: (1) Prosecutions

Controlling Officer: Director of Administration and Development (Gracie Foo)

Director of Bureau: Secretary for Justice

Question:

In respect of the figures provided by the Government for successful “prosecutions at the Magistrates’ Court, District Court and Court of First Instance levels in the past 5 years”, please inform this Committee of the following:

Since June 2019,

- 1) the number of cases of which judicial proceedings have been completed and the number of defendants involved;
- 2) the numbers of convicted cases and defendants involved;
- 3) the numbers of acquitted cases and defendants involved;

in all criminal cases handled by the Department of Justice (DoJ).

Please also inform this Committee of the following:

- 1) the number of cases of which judicial proceedings have been completed and the number of defendants involved;
- 2) the numbers of convicted cases and defendants involved, and the length of sentence;
- 3) the numbers of acquitted cases and defendants involved;

in criminal cases handled by the DoJ in relation to the “anti-extradition law amendments” incidents.

Asked by: Hon KWOK Ka-ki (LegCo internal reference no.:)

Reply:

Between June and December 2019, the number of cases conducted by the Prosecutions Division of the Department of Justice (DoJ) was 76 132.

The DoJ does not maintain statistics on the number of convicted or acquitted cases. In addition, our computer system will compile the full-year data for the preceding year, including the annual conviction rate and the concerned number of defendants, in January each year. Due to programming constraints, we are unable to trace the figures back to the

period between June and December last year and therefore can provide only the overall full-year statistics for 2019 as follows:

No. of defendants convicted on their own pleas	No. of defendants convicted after trial	No. of defendants acquitted after trial ^{Note}
2 860	2 135	1 692

Note: Including “offering no evidence” and “bound-over” cases

The DoJ does not maintain the requested statistics on cases concerning the “anti-extradition law amendments” incidents. According to the information provided by the Security Bureau, the Police Force arrested a total of 7 613 persons between 9 June 2019 and 29 February 2020 in relation to the “anti-extradition law amendments” incidents. As at 29 February 2020, of the 7 613 arrestees, 1 235 had undergone or were undergoing judicial proceedings (including 1 206 charged, 27 summonsed and 2 directly bound over), 6 were released under caution and 512 released without conditions, while cases involving 5 860 persons were still under investigation (including those released on bail pending further investigation and those released pending further investigation after refusing to be bailed).

Of the 1 235 arrestees having undergone or undergoing judicial proceedings, 78 have to bear legal consequences (including 52 convicted, 25 bound over and 1 subject to a care or protection order), and the charges against another 19 have been withdrawn while the rest are undergoing judicial proceedings.

- End -

CONTROLLING OFFICER'S REPLY

S-SJ006

(Question Serial No. S039)

Head: (92) Department of Justice

Subhead (No. & title): (-) Not Specified

Programme: (-) Not Specified

Controlling Officer: Director of Administration and Development (Gracie Foo)

Director of Bureau: Secretary for Justice

Question:

How much in the 2020-21 provision for the Department of Justice has been earmarked for use in respect of "Vision 2030 for Rule of Law" in 2020-21?

Asked by: Hon KWOK Wing-hang, Dennis (LegCo internal reference no.:)

Reply:

"Vision 2030 for Rule of Law" is at its preparatory stage in 2020-21. The manpower and expenses for the work will be absorbed and met by existing resources. The expenditure involved cannot be separately identified.

- End -

CONTROLLING OFFICER'S REPLY

S-SJ007

(Question Serial No. S040)

Head: (92) Department of Justice

Subhead (No. & title): (-) Not Specified

Programme: (3) Legal Policy

Controlling Officer: Director of Administration and Development (Gracie Foo)

Director of Bureau: Secretary for Justice

Question:

Please advise on the legislative progress in relation to the implementation of the Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters by the Courts of the Mainland and of the Hong Kong Special Administrative Region as at 29 February 2020.

Asked by: Hon KWOK Wing-hang, Dennis (LegCo internal reference no.:)

Reply:

The Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters by the Courts of the Mainland and of the HKSAR (Arrangement) will be implemented in the Mainland through the promulgation of a judicial interpretation by the Supreme People's Court, while it can only be implemented in Hong Kong by the enactment of local legislation.

In this regard, the Department of Justice (DoJ) is actively taking forward the relevant legislative work. Since the implementation of the Arrangement involves complex legal issues, such as how to lay down the specific scope of application of the Arrangement, and the relevant jurisdictional clauses, the DoJ needs to carefully examine these issues and has commenced the relevant work. We will conduct a public consultation on the legislative proposals for implementing the Arrangement in due course.

- End -

CONTROLLING OFFICER'S REPLY

SV-SJ001

(Question Serial No. SV006)

Head: (92) Department of Justice

Subhead (No. & title): (000) Operational expenses

Programme: (1) Prosecutions

Controlling Officer: Director of Administration and Development (Gracie Foo)

Director of Bureau: Secretary for Justice

Question:

Please provide details of the progress and outcome of the Department of Justice's effort to expedite the briefing-out of the case backlog to solicitors or barristers in private practice, including the number of cases briefed out after the process was expedited.

Asked by: Hon LIAO Cheung-kong, Martin (LegCo internal reference no.:)

Reply:

The Department of Justice (DoJ) has not kept overall statistics on the criminal case backlog since the implementation of the General Adjourned Period ("GAP") on 29 January 2020. Our rough estimate is that there was a backlog of some 400 criminal cases at various levels of courts other than magistracies as at 3 April. We have not kept statistics nor made an estimate on the criminal case backlog at magistracies during that period. We also have not kept statistics on cases briefed out due to the implementation of the GAP by the Judiciary.

The DoJ will continue to brief out suitable cases, including criminal case backlog arising during the GAP, to barristers or solicitors according to established briefing-out criteria.

- End -