

LCQ: Prosecution under Public Order Ordinance

Following is a question by the Hon Emily Lau and an oral reply by the Secretary for Justice, Ms Elsie Leung, in the Legislative Council today (February 19):

Question:

The Department of Justice ("D of J") earlier invoked the Public Order Ordinance for the first time to prosecute three persons for organizing or assisting in organizing an unauthorized public procession on 10 February 2002. It was reported that, in giving the verdict, the Chief Magistrate responsible for hearing the case had queried whether the case, which was of a "political nature", should have been handled by the court. Moreover, as a total of 344 public processions and meetings of which less than seven days' notice had been given were held during the period from January 1999 to July 2002, and none of the organizers of these processions and meetings had been prosecuted, there have been comments that the prosecution was selective and had undermined the spirit of the rule of law. In this connection, will the Executive Authorities inform this Council:

- (a) whether they will consider not to prosecute in the future those people who organize or assist in organizing unauthorized peaceful public processions or meetings, or give less than seven days' notice of such processions or meetings;
- (b) of the criteria adopted by the D of J for determining whether to prosecute those people who organize or assist in organizing unauthorized peaceful public processions or meetings, or give less than seven days' notice of such processions or meetings; and
- (c) whether they have assessed the impact of the prosecution on the spirit of the rule of law in Hong Kong; if so, of the assessment results; if not, the reasons for that?

Reply:

Madam President,

Before dealing with the three specific parts of the question it may be helpful to note the following important general points.

First, to avoid any confusion arising from the question's reference to "Executive Authorities", may I clarify that it is the responsibility of the Department of Justice, under Article 63 of the Basic Law, to control criminal prosecutions.

Second, the question referred to "comments that the prosecution was selective and had undermined the spirit of the rule of the law." I wish to point out that the Chief Magistrate said in the last paragraph of his judgement that: "I hereby hold that Sections 13, 13A and 14 of the Public Order Ordinance are in line with the requirements of Article 27 of the Basic Law and Article 17 in Part II of the Hong Kong Bill of Rights. I firmly believe that the Prosecution has proved the elements constituting the three charges and I now find all defendants guilty."

Third, as Secretary for Justice I wish to encourage as much transparency in the prosecution process as possible, always bearing in mind that there are some inevitable constraints upon public discussion of ongoing court cases. The case referred to in the question is currently under appeal and it would therefore not be appropriate to make any comments concerning it. Inevitably, there will be some constraints to the reply.

Turning to the specific parts of the question:

(a) The Department of Justice has been taking and will continue to take prosecutorial decisions, including those under the Public Order Ordinance (POO), in accordance with established prosecution policy. The provisions of the POO, like any other piece of legislation enacted in Hong Kong, reflect the laws of our community. Those who violate our laws are liable to prosecution. People who deliberately disregard the law must expect to face the consequences of their actions. On 21 December 2000, the Legislative Council, by a vote of 36 to 21, passed a motion to support the retention of the relevant provisions of the POO, which are considered to reflect "a proper balance between protecting the individual's right to freedom of expression and right of peaceful assembly, and the broader interests of the community at large." I believe it is well understood within the Hong Kong community that the Police will enforce the law in accordance with established principles, and that prosecutions will be brought by the DoJ in appropriate cases.

(b) The test for prosecution for offences against the P00 is the same as for prosecution for any other offence. First, it must be determined if there is sufficient evidence to afford a reasonable prospect of conviction. Second, if so, it must be decided if it is in the public interest to prosecute. Within those parameters, if a breach is minor or technical or inadvertent, a warning might, in some circumstances, be all that is required. But if a person manifests a deliberate intention to defy the law, or chooses to disregard warnings given by police, a prosecution may be appropriate. Every case is examined carefully on the basis of its own individual facts.

(c) This part of the question queries "the impact of the prosecution", and as such is difficult to answer without straying into the restricted area of discussion of on-going court cases. However in answer to part (c) I should like to affirm the following. The rule of law requires that laws be respected and upheld by all. To allow some people to flout laws with impunity would undermine not only the rule of law, but also respect for the rule of law. It is therefore entirely proper for prosecutions to be brought in appropriate cases. As in other large cities, it is necessary to achieve a proper balance between the rights to freedom of expression and peaceful assembly on the one hand, and the broader interests of the community on the other. Hong Kong is a small and densely populated place, and most people who wish to hold public processions and public meetings recognise this and co-operate responsibly with the authorities over the arrangements. Between 1 July 1997 and 31 December 2002, some 12,000 public meetings and public processions took place in Hong Kong. Only 20 events were disallowed because of concerns for public safety, public order and protection of the rights and freedoms of others. Eight of those events subsequently took place after the organisers revised their routing, venue or scale. Organisers who are aggrieved by a decision can appeal to an independent appeal board chaired by a retired judge and made up of non-official members. The whole system has built-in safeguards and is carefully designed to achieve justice for all. That, in turn, ensures that in a sensitive area the rule of law predominates.

End/Wednesday, February 19, 2003

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