

LCQ 15: Administration of justice

Following is a question by the Hon Elizabeth Quat and a written reply by the Chief Secretary for Administration, Mr Matthew Cheung Kin-chung, in the Legislative Council today (December 4):

Question:

Regarding the administration of justice in respect of cases relating to the disturbances arising from the opposition to the proposed legislative amendments, will the Government inform this Council:

(1) given that a serving judge had earlier on signed a joint public petition in opposition to the proposed legislative amendments and some judges had anonymously expressed to the media their views on the proposed legislative amendments, but the Chief Justice of the Court of Final Appeal merely issued an advice to the judge who had signed the joint petition, whether it knows the measures currently put in place by the Judiciary to (i) ensure that judges comply with the Guide to Judicial Conduct issued by the Judiciary (especially paragraph 76 which provides that judges should refrain from association with political activities), and (ii) deal with breaches of the Guide by judges;

(2) as Articles 82 and 92 of the Basic Law provide that judges from other common law jurisdictions may be invited/recruited to hear cases (including cases of the Court of Final Appeal), whether it knows the mechanism put in place by the Judiciary to ensure that such judges uphold neutrality when hearing cases involving national security and interests;

(3) given that the number of arrestees in relation to the disturbances arising from the opposition to the proposed legislative amendments has exceeded 4 000 so far, whether the Government will discuss with the Judiciary, by reference to relevant overseas practices, the setting up of a special riot court dedicated to hearing such cases, in order to avoid the building up of a backlog of prosecutions listed for hearings by the court; if so, of the details; if not, the reasons for that;

(4) given that the arrestees in relation to the disturbances arising from the opposition to the proposed legislative amendments, when admitted to bail by the court, were required to pay an amount of bail ranging from several hundred dollars to several tens of thousand dollars, whether the Government knows the criteria generally adopted by judges for determining the level of the amount of bail;

(5) of the respective numbers of legal aid applications (i) received and (ii) approved by the Legal Aid Department in the past six months in respect of cases relating to the disturbances arising from the opposition to the proposed legislative amendments, and the total amount of money involved; the criteria adopted by the Department for vetting and approval of such

applications; and

(6) as it is learnt that some demonstrators, who had been arrested in relation to the disturbances arising from the opposition to the proposed legislative amendments, had breached the bail conditions while admitted to bail by the court, but they continued to be released on bail, whether it knows the reasons for that?

Reply:

President,

In consultation with the Judiciary and the Legal Aid Department (LAD), the Government's reply to the Hon Elizabeth Quat's question is as follows:

(1) As stated by the Chief Justice of the Court of Final Appeal (CFA), generally speaking, having regard to the independence and impartiality of the Judiciary, judges should refrain from expressing comments on political and other controversial issues. In particular, judges should avoid expressing views on legal issues which may come before the courts. The Chief Justice has reminded all the judges of the importance of the foregoing and will take such further action where appropriate.

(2) Judges at all levels of courts, including non-permanent judges from other common law jurisdictions (CLNPJs), take judicial oaths on assumption of office in accordance with Article 104 of the Basic Law and the Oaths and Declarations Ordinance (Cap 11). In taking the judicial oath, judges swear that they will uphold the Basic Law of the Hong Kong Special Administrative Region (HKSAR) of the People's Republic of China (PRC), bear allegiance to the HKSAR of the PRC, serve the HKSAR conscientiously, dutifully, in full accordance with the law, honestly and with integrity, safeguard the law and administer justice without fear or favour, self-interest or deceit. Accordingly, it is important to emphasise that CLNPJs when sitting in the CFA are functioning as Hong Kong judges and will only deal with cases strictly in accordance with the law of Hong Kong.

(3) In response to the upsurge in the number of court cases arising from recent events opposing the proposed legislative amendments, the Chief Justice has publicly stated that the Judiciary will strive to deal with cases expeditiously and efficiently as far as practicable while at the same time ensuring that they are handled fairly and strictly in accordance with the law. In fact, in response to some recent cases where a large number of defendants were brought before the Magistrates' courts, the courts have been exercising flexibility to continue with court hearings beyond the normal court hours until late evenings on a need basis.

In anticipation of the upsurge in the number of cases arising from the recent events, the Chief Justice has tasked the Court Leaders of various levels of courts to explore all possible means to achieve the objective of handling the cases as expeditiously as possible. As the operation of the judicial system requires the support of many other stakeholders, including

the legal profession, the Department of Justice, law enforcement agencies, Correctional Services Department, LAD and other organisations such as the Duty Lawyer Service, etc., any changes in the court and hearing arrangements may have an impact on them. The Judiciary has stated that all relevant stakeholders will be closely consulted in the process.

(4) and (6) According to the Judiciary, when a criminal charge is laid against a defendant, the case will first be brought up in a Magistrates' Court. In the majority of cases, at the first appearance, the prosecution will ask for no plea to be taken, i.e. the court is requested not to ask the defendant to plead whether he or she is guilty or not guilty to the charge. When the case cannot be disposed of at the first appearance and is adjourned for further hearings, the question of bail will arise. The magistrate will deal with bail strictly in accordance with the legal requirements under Part IA of the Criminal Procedure Ordinance (Cap 221). Briefly, under sections 9D(1) and 9G(1), the magistrate shall grant bail to a defendant unless it appears to the magistrate that there are substantial grounds for believing that the defendant would fail to surrender to custody as the magistrate may appoint; or commit an offence while on bail; or interfere with a witness or pervert or obstruct the course of justice. In deciding on whether bail should be granted, the magistrate would take into account all relevant factors including those listed in section 9G(2).

The Judiciary has also indicated that the magistrate would take into account the position and arguments of the prosecution and the defence, and all relevant materials placed before the court by the parties. Each case has to be considered on its own merits as to whether bail would be granted; and if so, on what terms.

The granting of bail and the imposition of any bail conditions, including any bail amounts, are judicial decisions which are made on a case-by-case basis. If the prosecution or the defendant is dissatisfied with the magistrate's decision on bail including its conditions, they may apply to the Court of First Instance of the High Court for review or variation. The Court of First Instance will likewise consider and decide such an application in accordance with the legal requirements under Part IA of the Criminal Procedure Ordinance.

(5) As at November 21, 2019, statistics on applications for legal aid in criminal cases relating to events opposing the proposed legislative amendments are as follows:

Applications for legal aid in criminal cases received	legal aid certificates granted	Expenses incurred*
21	13	Not applicable

*LAD does not maintain separate statistics on expenses of criminal cases relating to events opposing the proposed legislative amendments.

LAD will continue to process all legal aid applications, including applications relating to events opposing the proposed legislative amendments, in accordance with the Legal Aid Ordinance (Cap 91) and the Legal Aid in Criminal Cases Rules (Cap 221D). To qualify for legal aid, a person must satisfy both the statutory means test and merits test. LAD will carefully monitor all cases to ensure the proper use of public funds.