

CJ's speech at Ceremonial Opening of Legal Year 2022

The following is issued on behalf of the Judiciary:

Following is the full text of the speech delivered by the Chief Justice of the Court of Final Appeal, Mr Andrew Cheung Kui-nung, at the Ceremonial Opening of the Legal Year 2022 today (January 24):

Secretary for Justice, Chairman of the Bar, President of the Law Society, fellow judges, distinguished guests, ladies and gentlemen,

On behalf of the Hong Kong Judiciary, I extend a warm welcome to all of you to the Opening of the Legal Year. This important occasion focuses public attention on the administration of justice and the rule of law. It reminds our community of the essential role played by an independent judiciary in the continued success of Hong Kong under the "one country, two systems" arrangement. It also provides an occasion for us to address the public on the challenges we face.

Hong Kong is a society governed by the rule of law. Article 25 of the Basic Law provides that all Hong Kong residents shall be equal before the law, and Article 22 of the Hong Kong Bill of Rights further states that all persons are entitled without any discrimination to the equal protection of the law. Government and other public authorities are accountable under the law, just as all private individuals and organisations. As a mature common law jurisdiction, Hong Kong has an established public law regime which ensures that the Government and other public bodies operate within the law and that public powers are exercised in accordance with the requirements of the law.

The rule of law ensures and promotes fairness, equality and justice, which are the core values in the administration of justice under our system of law. Many regard the protection of fundamental human rights as a key component of the rule of law. In Hong Kong, fundamental rights are constitutionally guaranteed in Chapter III of the Basic Law, as well as the Hong Kong Bill of Rights, which is constitutionally entrenched under Article 39 of the Basic Law. Our law reports are full of cases where these fundamental rights are generously interpreted and restrictions narrowly confined by reference to their aim, relevance, necessity and proportionality.

An essential lynchpin of the rule of law in Hong Kong is an independent judiciary. Judicial independence in Hong Kong is constitutionally guaranteed by the Basic Law. Articles 2, 19 and 85 of the Basic Law specifically provide that the judicial power, including that of final adjudication, enjoyed by the Hong Kong Special Administrative Region under the Basic Law is exercised by the Judiciary independently, free from any interference. The Basic Law and the relevant legislation also provide clear and strict provisions regarding

the appointment and removal of judges. Article 88 of the Basic Law provides that judges and judicial officers (collectively "judges") are appointed by the Chief Executive on the recommendation of the independent Judicial Officers Recommendation Commission. The Commission is chaired by the Chief Justice, and also comprises the Secretary for Justice as an ex-officio member and seven members appointed by the Chief Executive. Of these seven members, two are judges, one is a barrister appointed after consultation with the Bar Council, another one is a solicitor appointed after consultation with the Council of the Law Society, and the remaining three are persons who are not connected with the practice of law. Appointment of judges, whether local or from overseas, must be based on and only based on judicial and professional qualities, as stipulated under Article 92.

For those who are interested in finding out how the constitutional guarantee on judicial independence in Hong Kong is practised on the ground, our court hearings are open to the public, our judicial decisions are publicly announced, and the courts' reasons are published for everyone to study.

For cases concerning offences endangering national security, only judges designated by the Chief Executive under Article 44 of the National Security Law can handle them, and this has given rise to comments in some quarters in relation to the impartiality of the designated judges. It is of course not my role as Head of the Judiciary to make extra-judicial comments on the law or its operation. However, it is conducive to public confidence in our judicial system to assure the community that, from the Judiciary's perspective, there is no question of the impartiality of our courts being affected by this special arrangement under Article 44. In this regard, I would like to highlight several important facts.

First of all, judges are designated by the Chief Executive who may consult the Chief Justice before making a designation. The Chief Justice also makes suggestions to the Chief Executive on possible designations where appropriate.

In this connection, it should be noted that judges hearing national security cases are designated from serving judges only. By definition, they are persons who have satisfied the high requirement of judicial and professional qualities under Article 92 of the Basic Law to be appointed as judges in the first place.

Moreover, designated judges, like all other judges, are subject to the Judicial Oath which all judges are required to take under Article 104 of the Basic Law. Under the Judicial Oath, a judge swears to serve Hong Kong conscientiously, dutifully, in full accordance with the law and with integrity, and to safeguard the law and administer justice without fear or favour, self-interest or deceit. In particular, this means that no political or other personal considerations of the judge can be entertained in the judicial decision-making process. The Judicial Oath is binding on a designated judge when he or she sits on a national security case, just as it is binding on them when hearing other types of cases.

It is also important to point out that whilst the general power to designate judges to hear national security cases vests in the Chief Executive, the actual assignment of designated judges to hear individual cases remains the responsibility of the Court Leaders, just like all other types of cases.

Finally, where three designated Court of First Instance judges sit without a jury to hear a national security case that falls within Article 46 of the National Security Law, their verdict is given in a fully reasoned judgment which is published online for public scrutiny. Moreover, the same procedural safeguards are in place to ensure a fair trial as in a jury trial, and the same appeal procedure is available to a defendant in case of a conviction.

In the past two years, the subject of judicial independence in Hong Kong has attracted a fair amount of attention and comments, not only locally but overseas also. Healthy attention and constructive comments on the Judiciary and its work are always to be welcomed as they help to improve our work and remind us of the utmost importance of judicial independence to the maintenance of the rule of law and the continued success of Hong Kong under the "one country, two systems" arrangement. However, when such attention and comments are not based on objective facts and rational arguments, but rather on surmises, political stances or geopolitical considerations, they are of no value to the advancement of the rule of law in Hong Kong or the upholding of judicial independence. Criticisms of court decisions which are made without first ascertaining the facts in a case or reading and understanding the reasons for the court's decision are as meaningless as they are hollow. So is any unsubstantiated doubt over the courts' independence. Judicial independence in Hong Kong exists as a fact. And we are here today to bear witness to this fact.

In recent months, attempts to intimidate or otherwise exert improper pressure on judges involved in trying cases arising from the events in 2019 or national security cases are on the rise. These attempts are a direct affront to the rule of law and judicial independence. They certainly deserve condemnation and indeed many have spoken out against them in strong terms.

What should also be stressed is that these attempts to threaten and pressurise our judges are completely futile and pointless. The work of our courts remains wholly unaffected by them and our judges continue to dispense justice as it ought to be. Criminal liability will continue to be determined in accordance with the applicable law and the strength of the evidence presented before the court. Those who are proven guilty will be convicted and those not so proven will be acquitted. Convicted defendants will be given punishments that their crimes deserve, no more and no less. This is our job as judges, and we are determined to discharge our duty without regard to any threats that are made to deter us from it.

Without giving these distracting threats and interferences any more attention than they require, we have appropriately stepped up security

measures in our court buildings so as to ensure the personal safety of all our judges and court users, as well as the due administration of justice and the solemnity of judicial proceedings.

Turning to a different but related topic, in my address given at the Opening of the Legal Year last year, I mentioned that we would review our existing mechanism on handling complaints against judicial conduct. The review has since been completed, and the enhanced mechanism with a two-tier structure was set up and came into effect on August 16 last year. In short, pursuable complaints against judicial conduct which are serious or complex, or have aroused wide public attention will now be dealt with under the two-tier system. A panel of judges comprising more than one High Court judge will first investigate these complaints. The second tier Advisory Committee, comprising senior members of the Judiciary and members from the community with a good and balanced mix of expertise and experience in professional and public services, will then review and advise on these cases before the Chief Justice makes a final decision on each complaint. All results are made public and annual reports are published. The first meeting of the Advisory Committee was successfully held in September last year and the next one will be held in just over a month's time. Premised on the principle that there should be no undermining of judicial independence, this revised mechanism of handling complaints against judicial conduct will further enhance the transparency and accountability of our system, as well as public confidence in the Judiciary.

Allied to the enhancement of the complaints handling mechanism is the updating of the Guide to Judicial Conduct which was first published in 2004. Judges hold positions of trust and responsibility with regard to the cases and other judicial work that they handle. We owe it as much to ourselves as to the public to observe at all times the highest standards of judicial conduct. At the time the Guide to Judicial Conduct was first published, the topic of judicial ethics, or judicial conduct, was still in its early stages. Indeed the Guide was a pioneer work. In the years since the Guide was first published, the topic of judicial conduct has seen much growth and development. Given the increasingly complex conditions in which judging takes place, and the increased public interest in the performance of judicial duties, the time has come to review the Guide. Accordingly, in March last year, I set up a Working Party, chaired by the Chief Judge of the High Court, to conduct a review of the Guide. In reviewing the provisions of the Guide, the Working Party consulted the Bangalore Principles of Judicial Conduct developed by the United Nations Office on Drugs and Crime, as well as overseas material from major common law jurisdictions. I have since accepted the report of the Working Party and the new edition of the Guide is now being finalised. I believe that when published, this new edition will continue to assist our judges to maintain the highest standards of judicial conduct, and give the public a better understanding of our judicial work and the uncompromised standards we set for ourselves.

Turning lastly to the question of judicial efficiency, I would like to assure the community that Hong Kong is blessed with dedicated judges at all levels of court who are committed day in, day out to the practical

administration of the law, regardless of praise or criticism. The workload is always heavy, and manpower tight. All this must be firmly borne in mind in any discussion on further improving judicial efficiency and output. In my address at the Opening of the Legal Year last year, I mentioned the importance of judicial recruitment. I am happy to say that in the latest recruitment exercises for different levels of court, the responses have been encouraging. Three appointments to the Court of First Instance of the High Court were made in November last year and earlier this month. In the coming months, there will be further announcements made on judicial appointments to different levels of court. Moreover, deputy appointments from the legal profession will continue to be made to provide temporary manpower relief. However, the quality of justice is not something we can compromise on in the pursuit of efficiency, and only those who are of the appropriate judicial and legal qualities may be appointed to deputise in our courts.

Apart from increasing manpower, various measures have been and will be adopted to improve judicial efficiency. One important measure is to better manage the inevitable tension between efficient listing of cases for hearing and allocation of adequate time for judges to read into cases and judgment writing. In some cases, this would mean the imposition of more stringent case management directions, as to which I would ask the legal profession for its support and co-operation. It would also mean longer waits for trials in some cases, or longer waits for judgments in others. Striking the right balance is never an easy task. We are fully aware of the public's expectations and are doing all we can to meet them.

Another measure, which was first experimented with last year in cases and appeals falling within the Constitutional and Administrative Law List in the High Court, is the giving of a judgment handing down date at the conclusion of a hearing when judgment is reserved. Once given, the date will not be subsequently changed save for exceptional circumstances. This measure will in the course of this year be generally extended to all civil cases in the High Court and the District Court. It will align the practice, in this regard, between civil courts and criminal courts. The measure will also be extended to all criminal appeals and reviews in the High Court. New Practice Directions will be issued to give guidance on the timeframes within which judgments in different types of hearings are normally expected to be handed down. Judgment handing down dates will be given at the conclusion of hearings in accordance with these timeframes. For judgments reserved before the coming into effect of this new arrangement, administrative measures are in place to ensure that they are handed down within a reasonable time, and to this end extra efforts are being made.

Thirdly, we will continue to expand our judicial assistant scheme to provide support for more judges. In the High Court, we now have both full-time and part-time judicial assistants providing much needed assistance to some of our judges. Their service is of particular importance given the huge number of non-refoulement cases that are still pending before the Court of First Instance and the Court of Appeal. Of course, the judicial assistants also provide legal and research assistance in other types of cases and work.

Fourthly, as has been widely reported, we have renovated the mega court in the West Kowloon Law Courts Building and are in the process of constructing new court rooms in the Wanchai Law Courts Building to cater for the hearing of criminal cases which involve a large number of parties and lawyers. There are still a significant number of criminal cases pending before the District Court arising from the events in 2019. The availability of court rooms with a higher seating capacity and the more flexible use of existing court rooms will go some way towards expediting the hearing of these cases. The bottom line remains, however, that there can be no compromise on the fairness of the legal process.

Lastly, the Judiciary has been developing by phases an integrated court case management system across all levels of court for handling court-related documents and payments through an electronic mode. The entire project is expected to be completed in around three years.

We will implement e-filing in the District Court by phases from March this year starting with civil proceedings. As for the Summons Courts at the Magistrates' Courts, the rollout is tentatively planned for December this year. For the other courts, detailed planning has started. The Judiciary aims to roll out the external functions of the integrated court case management system for the other courts incrementally starting from 2024.

Besides, the Judiciary is working on the necessary legislative amendments to fully enable both the civil and criminal courts to conduct remote hearings as they see fit, having regard to all relevant circumstances, including in particular the dual requirements of open justice and fairness. Taking into account the need to further consult stakeholders and finalise the proposed legislative amendments, we plan to introduce the Bill into the Legislative Council later this year.

In conclusion, I would reiterate that the Hong Kong Judiciary is fully committed to maintaining an independent, impartial and efficient judicial system which upholds the rule of law and safeguards the rights and freedoms of everyone in Hong Kong in accordance with law.

It remains for me to wish you and your families good health and every happiness in the new year. Thank you.