

LCQ14: Statistics on criminal cases

Following is a question by Dr the Hon Tik Chi-yuen and a written reply by the Secretary for Security, Mr Tang Ping-keung, in the Legislative Council today (April 27):

Question:

In the movement of opposition to the proposed legislative amendments which broke out in 2019, more than 10 000 persons were arrested and over 2 000 prosecuted. In addition, after the implementation of the Hong Kong National Security Law in mid-2020, a number of persons were arrested one after another for suspected violation of the Law, but it has been reported that quite a number of such arrestees have been held on remand pending trial for more than one year, and the cases concerned are yet to be heard by the courts. In this connection, will the Government inform this Council:

(1) in respect of each of the two types of cases related respectively to (a) the movement of opposition to the proposed legislative amendments and (b) the Hong Kong National Security Law, of the respective up-to-date numbers of persons who have been (i) arrested, (ii) remanded pending trial, (iii) released on bail, (iv) prosecuted and (v) convicted; the respective ratios of the numbers of such arrestees to the numbers of those prosecuted, and the numbers of those prosecuted to the numbers of those convicted; and

(2) in respect of each of the two types of cases mentioned in (1), of the respective up-to-date (i) average and (ii) longest time taken (a) from the persons prosecuted being charged to the commencement of trials of their cases, and (b) from the commencement of trials of their cases to the conclusion of the cases; whether the authorities will take measures to shorten the time for listing for trial of such cases; if so, of the estimated time that can be shortened; if not, the reasons for that; in respect of those arrestees who have been held on remand pending trial for more than one year, whether the authorities will, as far as possible, refrain from objecting to their being released on bail pending trial?

Reply:

President,

Having consulted the Department of Justice (DoJ) and the Judiciary, my reply to the member's question is as follows:

(1) Any law enforcement actions taken by Hong Kong law enforcement agencies are based on evidence, strictly according to the law, and for the acts of the persons or entities concerned.

Moreover, Article 63 of the Basic Law expressly provides that all prosecutions are controlled by the DoJ, free from any interference. Prosecutions would be instituted by the DoJ only if there is sufficient admissible evidence to support a reasonable prospect of conviction and if it

is in the public interest to do so.

Regarding the illegal acts relating to the serious violence since 2019, as at February 28, 2022, the Police had arrested 10 277 persons in total, out of which 2 804 persons had been prosecuted (27.3 per cent of the arrested persons), and 1 172 persons had been convicted (41.8 per cent of the prosecuted persons). Court proceedings of 939 persons are underway. The Police do not maintain statistics of persons remanded in custody and those released on bail for illegal acts relating to the serious violence.

Since the implementation of the National Security Law on June 30, 2020, up to March 31, 2022, 175 persons were arrested for committing acts that endanger national security (including those concerning offences under the National Security Law and other offences endangering national security). One hundred and twelve persons out of those arrested (64 per cent of the arrested persons) and five companies were charged. At present, eight persons were convicted (100 per cent of those with trial concluded), while 78 and 59 persons were remanded in custody and released on bail respectively.

(2) The DoJ has all along handled criminal prosecutions independently, free from any interference in accordance with Article 63 of the Basic Law. For handling cases concerning offences endangering national security, the DoJ also strictly complies with Article 42(1) of the National Security Law, which stipulates that "the law enforcement and judicial authorities of the Region shall ensure that cases concerning offence endangering national security are handled in a fair and timely manner". All prosecutions are carried out in strict accordance with the relevant law.

The time taken between the institution of prosecution and the trial of each case depends on a multitude of factors, such as whether further investigation is required, whether the defendant needs time to obtain legal advice for consideration of his/her plea or whether the defence requires certification of translated documents or exercises rights under the law to make any pre-trial application. To echo the concluding remarks of the Appeal Committee of the Court of Final Appeal in a case in 2021 (Note), it is now incumbent on all parties and the court to process cases concerning offence endangering national security with full co-operation and all possible expedition. We do not maintain the figures from the institution of prosecution to trial as requested in the question.

According to information from the Judiciary, their operational experience shows that cases related to the 2019 "anti-extradition amendment bill incidents" (anti-EAB cases) and the National Security Law (NSL cases) have been posing unprecedented challenges to the Judiciary in terms of resources and operation because many of these cases involve a large number of defendants, legal representatives, media and public viewers, and evidences in the form of large volume of video recordings, which require longer trials of more than 20 to 30 days.

While the court has always proactively accorded priority to the handling of anti-EAB and NSL cases and endeavours to fix an earliest possible date for each of those more complex cases involving a large number of defendants, the

processing time of each case from the first hearing date to conclusion depends on a range of factors, many of which are beyond the control of the Judiciary.

Similar to the judicial proceedings of other criminal cases, after the first hearing and before the case is ready for trial, the parties in each case will invariably need time to complete a series of necessary steps and procedures to ensure due administration of justice (including access to a fair trial and safeguarding the rights and interests of all parties). These include investigation, collection of evidence and seeking legal advice from the DoJ by law enforcement agencies, defendants' application for legal aid or arrangement for private legal representatives, obtaining evidence from the prosecution, investigation of such evidence and seeking legal advice, as well as trial preparation by parties. Where necessary, the court may deal with issues on case management, such as the consolidation or severance of cases to facilitate the conduct of trials.

When a case is largely ready for trial, the court will endeavour to fix an earliest possible date having regard to a number of factors including the diary of the presiding judge, complexity of the case and number of hearing days required, the number of parties (particularly defendants) involved, the availability of parties and/or counsel involved and the time required by parties for case preparation.

Operational experience from some 90 anti-EAB cases concluded at the District Court (DC) over the past two years indicates that the processing time from their date of first appearance at the Magistrates' Courts to the date of conclusion at DC generally ranged from 300 to 400 days or so, which is about 30 per cent longer than other criminal cases. Please see Annex for a more detailed analysis.

In the past two years, the Judiciary has been according high priority to handling anti-EAB and NSL cases as expeditiously as possible while ensuring due administration of justice through a series of multi-pronged measures. These include –

- (a) engagement of additional judicial resources;
- (b) proactive case management by courts such as –
 - (i) fixing practicable timetables after taking into account the actual circumstances of the cases and monitoring the progress of the cases;
 - (ii) encouraging parties to co-ordinate among themselves in ongoing legal proceedings by, for example, directing parties to identify issues in dispute and discuss case management issues in between hearings; and
 - (iii) handling case management issues early, such as directing parties to submit written submissions on consolidation or severance of cases;
- (c) longer court sitting hours and Saturday sittings;
- (d) making the best use of around 135 existing courtrooms suitable for the criminal cases in 11 law court buildings for handling around 60 to 70 hearings of anti-EAB cases each week;
- (e) enlarging the capacity of existing courtrooms to handle cases with a larger number of defendants through renovation and/or broadcasting of hearings;

- (f) re-commissioning the Tsuen Wan Law Courts Building since October 2021; and
- (g) planning to construct a mega courtroom for up to 50 defendants at Wanchai Tower, which is expected to complete in 2023.

With the adoption of the above pragmatic measures to expedite the handling of anti-EAB and NSL cases, as of end February 2022, the Judiciary has already disposed of some 1 700 (i.e. 83 per cent) of some 2 100 anti-EAB cases brought to various levels of court. The vast majority of cases (at 94 per cent) at the Magistrates' Courts have been concluded. The imminent challenge in the coming one to two years is mainly to cope with around 190 outstanding cases being handled by the DC, around 85 per cent of which have been listed for trial in 2022 to 2023.

A total of 85 NSL cases, with many of them being bail-related ones, have been received at various levels of court. Among them, 64 cases (i.e. 75 per cent) have been concluded.

Note: Case number FAMC32/2021.