

LCQ15: Criminal prosecution work

Following is a question by the Hon Paul Tse and a written reply by the Secretary for Justice, Ms Teresa Cheng, SC, in the Legislative Council today (September 1):

Question:

Recently, the Court of Appeal (CA) allowed an appeal lodged by a young man, who had already served five years of imprisonment, against his conviction for the offence of drug trafficking. In its judgement, CA pointed out that the trial judge had suggested that the prosecution should take a statement from the appellant in relation to the involvement in the offence by the other defendant in the same case, and had requested the counsel appointed by the Department of Justice (DoJ) for representing the prosecution to report the case to DoJ, so that DoJ could decide whether or not to continue with the prosecution. The prosecution subsequently informed the court that the Director of Public Prosecutions (DPP) had, after consideration, decided to continue with the prosecution. The CA judges criticised in the judgement that the prosecution seemed not to have much desire to find out what really happened, and had traded the opportunity to pursue the other defendant's suspected offence of organising drug trafficking for a conviction of someone who had been minimally involved and might have been innocent. There are comments criticising that DoJ may not shift its responsibility in this case to other parties. Regarding criminal prosecution work, will the Government inform this Council:

(1) whether, during the time of the original trial of the aforesaid case, the Secretary for Justice and DPP had personally listened to or perused the report(s) made by the counsel representing the prosecution, and what other DoJ officials had been involved in listening to or perusing such report(s); of the considerations and justifications based on which DoJ decided to continue with the prosecution; and

(2) whether it has assessed if this case has revealed the existence of serious flaws in the criminal prosecution work and system, and if this case will undermine public confidence in the legal system of Hong Kong and the professionalism of prosecutors, thereby causing the public to be worried that the prosecutors are muddling along; if it has assessed, of the details; if not, the reasons for that?

Reply:

President,

Regarding the Court of Appeal's decision on July 22 this year in a case of attempting to traffic in a dangerous drug (Reasons for Judgment dated August 11, 2021) mentioned in the question, the Department of Justice (DoJ) had already made submissions in court. As the legal proceedings relating to the case are ongoing, it is not appropriate for the DoJ to make any

comments.

It must be stressed that when conducting prosecutions, prosecutors are required to comply with and promote the rule of law, fairly and objectively assist the court to arrive at the truth and to do justice in accordance with the law. Professional, impartial and independent prosecution work is pivotal in safeguarding the rule of law in Hong Kong. The Prosecution Code issued by the DoJ provides reference points and guidance for prosecutors in prosecution work. It states that the responsibility of prosecutors is to apply the highest of professional standards in handling criminal cases. Be it the decisions of whether to institute or not to institute prosecution, or the cases where prosecutions have already been commenced, the Prosecution examines, in accordance with the Prosecution Code and the applicable law, whether the relevant evidence supports a reasonable prospect of conviction. There must be legally sufficient evidence to support a prosecution; that is, evidence that is admissible and reliable and, together with any reasonable inferences that may be drawn from it, likely to prove the offence. In each case, prosecutors strive to uphold the Prosecution Code, and depending on the development of the case and the overall circumstances, review whether the relevant evidence is sufficient to justify the continuation of prosecution. The Prosecutions Division also reviews and updates from time to time the approaches and procedures in handling criminal cases for enhancement of prosecution work.

The Secretary for Justice, the Director of Public Prosecutions and the prosecution team have all along been discharging their prosecutorial duties fairly and without prejudice or favour in accordance with the above principles so as to safeguard criminal justice. The DoJ's internal discussions must be kept confidential.