

LCQ18: Open and fair trials

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 (June 10):

Question:

Since the eruption of the disturbances arising from the opposition to the proposed legislative amendments in June last year, incessant violence and unlawful acts have hard hit the economy and people's livelihood. Although the Chief Justice of the Court of Final Appeal pointed out in his statement issued on May 25 this year that judges had a responsibility, owed to the community, to adjudicate on cases fairly and impartially, many members of the public have complained to me that some judges misconducted themselves (e.g. signing a joint public petition in opposition to the proposed legislative amendments) and the sentences they imposed in relation to some of the cases involving the movement of opposition to the proposed legislative amendments were inappropriate. In this connection, will the Government inform this Council:

(1) whether it knows the number of complaints about the conduct of judges received by the Judiciary since June last year; the number of cases handled and followed up by the Court Leaders and, among such cases, the respective numbers of those which were (i) substantiated and (ii) unsubstantiated, and the reasons for them to be found unsubstantiated;

(2) whether it knows if the Judiciary will make reference to the practices in overseas jurisdictions and set up an independent judiciary monitoring committee to subject the conduct of judges to public scrutiny, so as to enhance the credibility of the judicial system; if the Judiciary will, of the details; if not, the reasons for that; and

(3) as there are comments that the sentences imposed by courts in recent years seemed to lack consistency, e.g. significant variance in the sentences imposed on defendants convicted of the same offence, and substantial fluctuations in the sentences imposed on a defendant in the same case by the courts at various levels (i.e. the sentence imposed being light at first instance, heavier on appeal, and yet being reduced to the initial sentence or even a lighter sentence on final appeal), whether it knows the number of sets of sentencing guidelines promulgated by the courts at various levels to the courts below in the past three years; whether the Judiciary will make reference to the practices of the United States or the United Kingdom and set up a sentencing commission or council to issue binding sentencing tariffs on all criminal offences; if so, of the details; if not, the reasons for that?

Reply:

President,

Based on the information provided by the Judiciary, the Government's reply is as follows:

(1) In line with the cardinal principle of judicial independence, the Judiciary cannot and will not handle complaints against judicial or statutory decisions. The reason for this is that the mechanism to deal with any dissatisfaction with judicial or statutory decisions is by way of appeal, review or related judicial proceedings. As regards complaints relating to judicial conduct, the existing mechanism is for these complaints to be handled by the Chief Justice and/or the Court Leaders of the relevant level of court.

In 2019, 368 complaints against judges and judicial officers were disposed of under the mechanism. Of these, 353 complaints were related to judicial or statutory decisions, ten were related to judicial conduct, and five were review cases. Regarding complaints relating to judicial conduct, there was no justified or partially justified complaint. As for the complaint statistics in 2020, since the processing of the complaints is still ongoing, the Judiciary is not in a position to provide the relevant information at this stage. The Judiciary has been releasing regularly in its Annual Report the relevant complaint statistics, and information on the number of justified or partially justified complaints and their details.

(2) According to the Judiciary, the existing mechanism for dealing with complaints against judicial conduct is integral to upholding the principle of judicial independence. Judicial independence in handling complaints against judicial conduct against judges and judicial officers must be safeguarded and respected. In accordance with the framework of Article 89 of the Basic Law, a tribunal for investigation into the alleged misbehaviour of a judge should comprise judges and judges only. The investigating mechanism for handling complaints against judicial conduct should be consistent with the provisions and spirit of the Basic Law. The investigation should hence be conducted by judges and judges only. The Judiciary must continue to do this on its own without outside influence or interference.

(3) According to the Judiciary, a substantial part of the courts' work consists of the administration of criminal justice. Sentencing is an essential part of this process. It is an exercise of the courts' independent judicial power. Where a defendant pleads guilty or is found guilty after trial in a particular case, it is the court's duty to impose a just and appropriate sentence, applying the relevant principles to the circumstances of the crime and those of the offender. Reasons for the sentence are given. Where such sentence is regarded by a convicted person as excessive, that person may appeal. Where the Secretary for Justice considers the sentence to be manifestly inadequate or excessive, he/she may apply to the Court of Appeal for the sentence to be reviewed.

The main objectives of sentencing are retribution, deterrence, prevention and rehabilitation. All of them serve the public interest. Sometimes, seeking to attain one objective may lead to a more severe sentence

whilst seeking to achieve another may tend towards a more lenient sentence. The judge has to consider all the circumstances of each case and decide on the appropriate degree of significance that should be given to each objective in that case. When setting sentencing levels, the courts take into account all relevant factors. These include the prevalence of certain types of offences and public concern over such prevalence.

For certain types of crime, the Court of Appeal has laid down guidelines for sentencing for the purpose of promoting broad consistency. For example, for the offence of trafficking in dangerous drugs, guidelines have been laid down depending on the type of drug and the quantity involved. They provide guidance to judges in the exercise of their sentencing power. In the past three years (2017-2019), the court has given sentencing guidelines to the lower levels of courts once.

From time to time, views have been expressed in the public arena that a "sentencing committee" be established to set binding sentencing standards for all criminal cases. The Judiciary emphasises that sentencing is a judicial function to be exercised by the courts independently and exclusively. The courts make sentencing decisions day in and day out in a very large number of different cases. The circumstances which arise in the cases are of an infinite variety. Deciding on a just and appropriate sentence in each case is a challenging and difficult task for the courts and is a matter for balanced judicial judgment.

It is important that sentencing decisions by the courts command the respect and confidence of the community. Further, in a society which values freedom of speech as a fundamental right, all court decisions, including sentencing decisions, are open to public discussion. Such discussion is most meaningful when it is well informed and well considered, taking into account the circumstances of the case in question and the reasons of the sentencing judge. Where sentences are regarded as being inconsistent, excessive or inadequate, as stated above, the parties (which include the Secretary for Justice) can appeal or apply for a review of sentence.