

LCQ18: The conduct, decisions and promotion of judges

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 2):

Question:

The Judiciary disposed of 368 complaint cases against judges and judicial officers last year. Of these, 10 complaints were related to judicial conduct and 353 were related to judicial or statutory decisions. Besides, some members of the public have criticised the sentences imposed for certain recent cases as being inappropriate. Regarding the conduct, decisions and promotion of judges, will the Government inform this Council:

(1) whether it knows if the Judiciary will consider afresh drawing reference from the practices in overseas jurisdictions and setting 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;

(2) whether it knows if the Judiciary will consider afresh drawing reference from the practices in the United States or the United Kingdom and setting up a sentencing commission or council to issue binding sentencing tariffs on all criminal offences; if the Judiciary will, of the details; if not, the reasons for that, and whether the Judiciary will expeditiously study the issuance of sentencing tariffs on the offences involved in those cases relating to the movement of opposition to the proposed legislative amendments;

(3) given that while a number of judges had made, in recent months in handing down judgments on cases involving a political context, remarks that have given rise to controversies and complaints, only one of these judges should not, as the Judiciary has so far decided, for the time being deal with cases involving a similar context, whether it knows the criteria adopted by the Judiciary for making the relevant decisions;

(4) given that a magistrate was appointed as a temporary Deputy Registrar of the High Court in July, resulting in a jump in his remuneration by four pay points in the judicial service pay scale, whether it knows by whom the appointment was recommended and approved, and whether it was a special arrangement; if it was, of the reasons and other details;

(5) given that a person who was called to the Bar and became a Senior Counsel in 1991 and 2006 respectively had reportedly been convicted and fined in 1999, whether it knows the reasons why the Judiciary appointed this person, who had a record of criminal conviction, as a Deputy Judge and a Recorder of the Court of First Instance of the High Court in 2011 and 2013 respectively,

as well as the criteria adopted by the Judiciary for making the relevant decisions; and

(6) given that a number of persons, who had been charged in recent months for serious offences such as arson and wounding with intent and granted bail pending trial by the Courts, have reportedly absconded, whether it knows if the Judiciary will review the appropriateness of the decisions to grant bail made by the relevant judges; if the Judiciary will, 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) To safeguard and respect the principle of judicial independence under the Basic Law, the Judiciary is of the view that judicial independence in handling complaints against judicial conduct 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, namely the investigation should be conducted by judges and judges only. Accordingly, the Judiciary must continue to do this on its own without outside influence or interference. Besides, any dissatisfaction with judicial decisions should be rectified by way of appeal or review. This is the foundation of the Hong Kong legal system.

To enhance credibility and transparency in handling complaints against judicial conduct, the Judiciary has implemented a number of measures:

(a) each complaint will be investigated by the relevant court leader, who is invariably more senior in rank than the judge or judicial officer under complaint. Where appropriate, the complaint will be reviewed by one or more judges of a higher level of court;

(b) 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;

(c) starting from July 2020, where there have been a large number of identical or similar complaints on judicial conduct in relation to any case, the Judiciary would post on its website the gist of the complaints, the outcome of investigation and the grounds;

(d) currently, in accordance with the principle of open justice, all court hearings, save for some very limited exceptions (e.g. involving children), are open to the public. Judgments, reasons for verdict and reasons for sentence for District Court and above are available on the Judiciary website;

and

(e) starting from October 2020, summaries of selected decisions in the District Court and Magistrates' Courts which may attract great public attention will be prepared and uploaded to the Judiciary website as far as practicable to enhance public understanding about the reasoning of court decisions.

(2) The Judiciary emphasises that 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. All court decisions, including sentencing decisions, are open to public discussion. 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 excessive or inadequate, he/she may apply to the Court of Appeal for the sentence to be reviewed.

From time to time, views have been expressed that a "sentencing committee" be established to set sentencing standards for criminal cases. As a matter of principle, the Judiciary has reservations about this suggestion. The Judiciary reiterates that sentencing is a judicial function and it is a question of law. This function should be exercised by the courts independently and exclusively. In fact, the courts make sentencing decisions day in and day out on a very large number of cases. The circumstances which arise in the cases are of an infinite variety. Deciding on a just and appropriate sentence in all cases is a challenging and difficult task for the courts and is a matter for balanced judicial judgment. In this regard, decisions by the Court of Appeal in sentence appeals or reviews provide useful guidance to sentencing courts. Where appropriate, the Court of Appeal also sets sentencing guidelines, which are binding on all sentencing courts.

(3) The Judiciary has been taking the complaints against judicial conduct seriously. Each complaint is to be handled by the Chief Justice and the relevant Court Leader in accordance with the established mechanism. The Guide to Judicial Conduct (the Guide) sets out the important principles regarding the conduct of judges and judicial officers. Pursuant to the Guide, where there is actual, presumed or apparent bias, the judges and judicial officers concerned may be disqualified from hearing certain cases. As the actual circumstances of each complaint vary (including the legal basis relied upon, the wording, the context of the relevant statement(s) made by the judge in court concerned etc.), the Chief Justice and the relevant Court Leader will consider the circumstances of each complaint in detail and examine if the case is in line with the principles stipulated in the Guide. Moreover, as mentioned in part (1) above, where there have been a large number of identical or similar complaints on judicial conduct in relation to any case, the Judiciary would post on its website the gist of the complaints, the outcome of investigation and the relevant grounds, so as to enhance the

transparency in handling complaints against judicial conduct.

(4) In line with the usual arrangement of the Judiciary on the appointment of temporary/deputy judges and judicial officers from within the Judiciary, Court Leaders will, from time to time, having regard to the operational needs at different levels of court, make recommendations to the Chief Justice on the appointment of suitable serving judges and judicial officers from within the Judiciary as temporary/deputy judges and judicial officers for cross posting to or acting in the positions in higher level of court. The appointment of temporary deputy registrars is made by the Chief Justice pursuant to section 37A of High Court Ordinance (Cap. 4). All appointments are made having regard to normal operational needs.

(5) The Judiciary will not comment on individual appointment of judges or judicial officers. In considering appointment of judges and judicial officers, the Judiciary will, in accordance with the established procedures, request the applicants to provide their background information. In considering appointment of deputy judges or recorders, the requirements of Article 92 of the Basic Law will be taken into account (namely, judicial and professional qualities). Before a formal appointment is made, the Judiciary will conduct appointment checking including criminal record check for the person concerned.

(6) According to the Judiciary, 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 is required by law to 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 is required by law to take into account all relevant factors including those listed in section 9G(2). In deciding bail, the magistrate will consider the position and arguments of the prosecution and the defence, and all relevant materials placed before the court by the parties. If dissatisfied with the magistrate's decision on bail, both the prosecution and the defendant can 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.