

LCQ19: Non-refoulement claim-related judicial review cases

Following is a question by the Hon Lai Tung-kwok and a written reply by the Chief Secretary for Administration, Mr Chan Kwok-ki, in the Legislative Council today (January 17):

Question:

It is learnt that non-refoulement claim-related judicial review (JR) cases have accounted for over 90 per cent of the JR cases received by the court. There are views that this has put judicial resources under tremendous pressure. In this connection, will the Government inform this Council:

(1) of the numbers of non-refoulement claim-related cases handled by the various levels of courts (i.e. the Court of First Instance of the High Court (CFI), the Court of Appeal of the High Court (CA) and the Court of Final Appeal (CFA)) in each of the past three years;

(2) of the number of non-refoulement claim-related leave applications for JR approved by the CFI in each of the past three years;

(3) of the numbers of non-refoulement claim-related leave applications for appeal approved by the CA and the CFA in each of the past three years;

(4) of the current numbers of non-refoulement claim-related outstanding cases at the various levels of courts;

(5) among the legal aid applications received and refused and the legal aid certificates granted by the Legal Aid Department (LAD) in each of the past three years, of the respective numbers and percentages of those involving non-refoulement claims; among the non-refoulement claim-related cases in which legal aid was granted, of the respective numbers of successful cases at the various levels of courts; and

(6) as there are views that the LAD does not maintain the breakdown of the expenditure on legal costs involved in handling non-refoulement claim-related JR cases, making it impossible for society to grasp the amount of judicial resources taken up by the relevant cases, whether the authorities will consider making improvements in this regard; if so, of the details; if not, the reasons for that?

Reply:

President,

With the Judiciary consulted, my reply to the Hon Lai Tung-kwok's question is as follows:

(1) to (4)

According to the Judiciary, in consideration of the need to ensure the effective operation of all levels of court and, where reasonably feasible, they have been actively implementing a host of measures to expedite the processing of non-refoulement claim-related cases. These measures include increasing judicial manpower (including deployment of dedicated temporary judicial manpower) to specifically deal with related matters, streamlining the relevant court procedures and promoting the wider adoption of paper disposals to deal with suitable cases. The Judiciary will continue to closely monitor the progress of cases and flexibly deploy resources in response to operational needs, with a view to enhancing the efficiency in handling non-refoulement claim-related cases as far as practicable.

The relevant statistics on judicial review leave applications and appeals for non-refoulement claims are set out in the tables below (Note 1: the statistics in the following tables reflect the live data generated from the computer system as at the report generation date and time. They may be subject to further updating/refinements, where necessary.):

Table 1: The number of cases relating to leave applications for judicial review on non-refoulement claims and related appeals completed each year by various levels of court in the past three years

Year	Number of cases		
	Court of First Instance	Court of Appeal	Court of Final Appeal
2021	1 525	846	481
2022	1 438	718	523
2023 (as at October 31)	1 243	449	250

Table 2: The number of leave granted each year for judicial review on non-refoulement claims by the Court of First Instance in the past three years

Year	Number of cases
2021	50
2022	44
2023 (as at October 31)	26

Table 3: The number of appeals allowed by the Court of Appeal and leave to appeal granted by the Court of Final Appeal each year for cases relating to judicial review on non-refoulement claims in the past three years

Year	Number of cases	
	Court of Appeal	Court of Final Appeal (Note 2)

2021	13	—
2022	16	—
2023 (as at October 31)	3	—

Note 2: For the past three years, the Court of Final Appeal did not grant leave to appeal in any cases relating to judicial review on non-refoulement claims.

Table 4: The number of outstanding cases relating to leave applications for judicial review on non-refoulement claims and related appeals at various levels of court as at October 31, 2023; and the number of concerned cases completed from January 1, 2016 to October 31, 2023

Level of Court	Number of outstanding cases (as at October 31, 2023)	Number of cases completed (from January 1, 2016 to October 31, 2023)
Court of First Instance	7 423	7 480
Court of Appeal	403	3 173
Court of Final Appeal	470	1 632

(5) to (6)

In the past three years, among the civil legal aid applications received and refused as well as the legal aid certificates granted by the Legal Aid Department (LAD), the number and percentage of those involving non-refoulement claims are as follows:

Year	Civil legal aid applications	Civil legal aid applications involving non-refoulement claims [percentage to the civil legal aid applications]	Civil legal aid certificates granted (Note 3)	Civil legal aid certificates granted involving non-refoulement claims (Note 3) [percentage to the civil legal aid certificates granted]	Civil legal aid applications refused (Note 4)	Civil legal aid applications involving non-refoulement claims refused (Note 4) [percentage to the civil legal aid applications refused]
2021	11 875	427 [3.6%]	4 916	70 [1.4%]	5 496	320 [5.8%]
2022	9 480	448 [4.7%]	3 919	80 [2.0%]	4 398	334 [7.6%]
2023	9 558	378 [4.0%]	4 024	75 [1.9%]	4 220	253 [6.0%]

Note 3: Certificates may not be granted in the same year as the applications were received.

Note 4: Refusal may not be issued in the same year as the applications were received.

The LAD has put in place a mechanism to guard against abuse of legal aid. The Legal Aid Ordinance (Cap. 91) provides that legal aid will only be granted to applicants who have satisfied both the merits test and the means test. As such, all legal aid applications (including the applications for judicial review in relation to non-refoulement claims) are processed by Legal Aid Counsel employed by the LAD. In assessing the merits of an application, the LAD will carefully look into and consider the facts of the case, evidence available and the legal principles applicable to the case to determine whether there are reasonable grounds for legal aid to be granted. Even if an applicant is successfully granted legal aid, the LAD will still monitor his/her case from time to time to ensure that there are sufficient grounds for the aided person to continue to receive legal aid. Otherwise, the LAD will discharge the legal aid certificate.

The LAD does not maintain the breakdown of the statistics of the outcome and legal expenses for legally aided judicial review cases related to non-refoulement claims. The LAD is revamping its Case Management and Case Accounting System, upon completion of which more legal aid statistics related to non-refoulement claims will be made available.