

LCQ2: Granting of asylum by Germany to two bail jumpers

Following is a question by the Hon Michael Tien and a reply by the Secretary for Security, Mr John Lee, in the Legislative Council today (June 26):

Question:

In December 2017, two men who had been charged with rioting offences and admitted to bail pending trial failed to attend the trial, and the court therefore issued warrants of arrest against them. It was reported last month that they had been granted asylum by the German authorities in May last year. In this connection, will the Government inform this Council:

(1) whether, before the two persons were granted asylum by the German authorities, the Government had received requests from the German authorities for information about the offences in which they were involved for the purpose of assessing their asylum requests; whether a mechanism is in place for the Government to seek a review by the German authorities of their decision to grant asylum;

(2) when the Government came to know that the two persons had been granted asylum; apart from the Chief Executive conveying to Germany's Acting Consul General in Hong Kong strong objection to the granting of asylum, of the specific follow-up actions that have been and will be taken by the Government in this regard; and

(3) whether, according to the surrender of fugitive offenders agreement signed between the governments of Hong Kong and Germany, the offences allegedly committed by the two persons are offences for which surrender may be granted?

Reply:

President:

The two absconders who had jumped bail mentioned in the question were involved in the Mong Kok riot which took place in the small hours of February 9, 2016. The Mong Kok riot was a serious large-scale incident of mob violence. On the day, many rioters attacked police officers with bricks dug out from the pavement, home-made weapons and various kinds of hard objects, set fires at various locations and damaged police vehicles, wounded others and destroyed public property. Such violent acts seriously jeopardised public order and safety. Over 100 persons were injured in the incident, including over 80 police officers, as well as members of the media, unsettling many people in Hong Kong. After the incident, the Government of the Hong Kong Special Administrative Region (HKSAR) as well as various sectors of society

strongly condemned the acts of the rioters.

As at May 31, 2019, the Police arrested a total of 91 persons in connection with the Mong Kok riot. The Department of Justice has also prosecuted some arrestees of the alleged offences, including riot, incitement to riot, arson, unlawful assembly, incitement to unlawful assembly and assaulting police officers. The judicial proceedings of certain persons concerned are still on-going. So far, 30 persons have been convicted by the court, of which 23 persons were convicted of riot and were sentenced to training centre order or imprisonment ranging from three to seven years.

The two absconders who had jumped bail mentioned in the question were charged with serious charges, including "riot" and "assaulting police officer", in relation to the Mong Kok riot. The acts were in contravention of section 19 of the Public Order Ordinance (Cap 245) concerning the offence of riot with a maximum penalty of imprisonment for 10 years, and section 36 of the Offences against the Person Ordinance (Cap 212) concerning the offence of "assaulting any police officer in the due execution of his duty" with a penalty of imprisonment for two years. The two persons were originally scheduled to appear before the High Court on December 9, 2017 for a pre-trial review, but they did not attend the hearing and jumped court bail. The court issued an arrest warrant on the day, requesting the Police to track down the absconders and apprehend them.

My reply to the various parts of the question is as follows:

(1) The case mentioned in the question is a criminal litigation case. Generally speaking, the Police are responsible for case investigation, gathering of evidence and making arrests, while the Department of Justice will study and determine whether to prosecute and to prosecute with what charge, and make independent decisions. In the case mentioned in the question, the Hong Kong Police and the Department of Justice have never received any request for information from the German authorities. The HKSAR Government is disappointed that no basic assessment on or verification of the facts had been conducted by the German authorities. The Chief Executive in her meeting with Germany's Acting Consul General in Hong Kong on May 24 had expressed the HKSAR's strong objections and deep regrets.

(2) According to the Criminal Procedure Ordinance (Cap 221), a person admitted to bail who, without reasonable cause, fails to surrender to custody as shall have been appointed by a court, commits an offence. The person is liable on summary conviction to a fine of \$75 000 and to imprisonment for six months, and on conviction upon indictment to a fine of any amount and to imprisonment for 12 months. The court may issue an arrest warrant against the defendant. The Police will execute the arrest warrant and spare no efforts in tracking down the whereabouts of the suspect, with a view to bringing the suspect to court for handling as appropriate, including pursuing the legal liability of his jumping court bail, and continuing to handle the original case.

With regard to the two bail jumpers mentioned in the question, since the

issuance of arrest warrant by the court upon their failure to appear before the court in December 2017, the Police have been following up to locate the whereabouts of the persons, including making enquiries with the law enforcement agencies of multiple related countries through the police co-operation mechanism of INTERPOL. Upon learning about the report of the German authorities granting asylum, the Police have again asked the German police to provide information through the INTERPOL mechanism. As regards the specific content of the case, since details of investigation and pursuit of the bail jumpers are involved, it is not appropriate to be made public.

Besides, the Police and the Department of Justice are studying the case and will follow up in accordance with the relevant laws and evidence. The Police will continue to, by all possible means, pursue the two absconders who have jumped court bail against whom arrest warrants have been issued.

As mentioned before, upon learning about the media reports of the captioned case, the HKSAR Government has publicly expressed its strong objections and deep regrets. The HKSAR Government considers the granting of asylum to persons who had committed serious crimes and jumped court bail and absconded whilst awaiting trial, without any basic assessment or verifications of facts, lacks objective evidential basis, and unjustifiably undermines Hong Kong's international reputation in the rule of law and judicial independence. The Chief Executive has personally and categorically indicated her strong objections and deep regrets to Germany's Acting Consul General in Hong Kong.

(3) According to the "Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Federal Republic of Germany for the Surrender of Fugitive Offenders", there are 46 offences for which surrender may be granted. The first 45 offences are descriptions of specific offences, while the 46th offence is "any other offence for which surrender may be granted in accordance with the laws of both Parties".

According to the Fugitive Offenders Ordinance (Cap 503), the crime for which surrender may be granted must comply with the "double criminality" principle, i.e. it must constitute an offence in the jurisdictions of both the requesting party and the requested party.

In determining whether an offence is an offence punishable under the laws of both the party requesting the surrender and the requested party, the totality of the alleged acts or omissions of the person of whom surrender is sought shall be taken into account before reaching a decision, regardless of whether, under the laws of the parties, the constituent elements of the offence or the definition of the offence are the same. Simply put, the "double criminality" principle is decided based on the "act". Whether or not surrender may be granted over the act or omission depends on whether the act or omission itself also constitutes a criminal offence in Hong Kong and complies with the requirements in section 2(2)(b) of the Fugitive Offenders Ordinance; otherwise, it is not an offence for which surrender may be granted. The offence of jumping bail itself is not an offence for which

surrender may be granted under the Agreement.

Hong Kong's rule of law and independent judicial system are the core values of our society, and have long been held in high regard by the international community. According to the World Economic Forum's Global Competitiveness Report, Hong Kong is ranked first in Asia for judicial independence. According to Article 82 of the Basic Law, the power of final adjudication of the HKSAR shall be vested in the Court of Final Appeal. The Court of Final Appeal may as required invite judges from other common law jurisdictions to hear cases. Currently, there are 14 eminent overseas judges from the United Kingdom, Australia and Canada sitting on our Court of Final Appeal as non-permanent judges. In respect of criminal justice, anyone accused of breaching the law in Hong Kong would face an open and fair trial. Article 10 and Article 11 of the Hong Kong Bill of Rights also provide sufficient protection to any person with any criminal charge laid against him, or whose rights and obligations are in a suit at law. The Hong Kong courts will, as always, with their sound rule of law and human rights protection, handle all cases in an independent, fair and just manner.

Thank you, President.