

LCQ21: Legal aid

Following is a question by the Hon Luk Chung-hung and a written reply by the Chief Secretary for Administration, Mr John Lee, in the Legislative Council today (August 18):

Question:

From June 2019 to February this year, the Director of Legal Aid (DLA) received 1 059 legal aid applications submitted in respect of criminal cases relating to incidents of opposition to the proposed legislative amendments, and granted legal aid to 82 per cent of such applications. Besides, a woman who had been injured in her right eye at the scene of a demonstration for opposition to the proposed legislative amendments was granted legal aid for filing an application for judicial review (JR) in respect of the Police's refusal to produce to her a search warrant for obtaining her medical records, but her application was dismissed by the Court of First Instance in December 2019. In January of the following year, she applied for legal aid for lodging an appeal against such judgement, but her application was refused by the DLA. After appealing to the Registrar of the High Court (the Registrar) against the DLA's decision, she was granted legal aid. The woman reportedly left Hong Kong in September last year, and the Court of Appeal heard in February this year her appeal on the JR application. In this connection, will the Government inform this Council:

(1) of the total amount of legal aid expenditure incurred so far on the legal aid cases relating to incidents of opposition to the proposed legislative amendments, and the highest amount of legal aid expenditure involved for such cases;

(2) whether it will consider amending the Legal Aid Ordinance (Cap. 91) to stipulate that where a person who had been granted legal aid has emigrated overseas or left Hong Kong for a certain period before the commencement of the hearing of the case concerned, the DLA may revoke the relevant legal aid certificate; if so, of the details; if not, the reasons for that; and

(3) given that the Registrar's decision on an appeal lodged against an order or decision made by the DLA shall be final, whether the Government knows if the Judiciary has stipulated the factors that the Registrar must consider when making such decision; if the Judiciary has, of the details; if not, whether the Judiciary will expeditiously make such stipulation?

Reply:

President,

The Legal Aid Department (LAD) processes legal aid applications in accordance with the Legal Aid Ordinance (the Ordinance). Anyone who satisfies both the means test and the merits test is eligible for legal aid to pursue or defend a legal action in the courts of Hong Kong. All legal aid

applications are processed by in-house lawyers of the LAD.

Under the common law principle of presumption of innocence and the protection under the Bill of Rights and the relevant international covenants applicable to Hong Kong, any person charged with a criminal offence may choose to defend his/her case through legal assistance. If the defendant intends to plead guilty, the lawyer can also provide assistance in mitigation and other proceedings. Therefore, the LAD generally considers that a legal aid applicant charged with a criminal offence has met the requirements of the merits test. If the applicant has also satisfied the means test, he/she will be appointed a lawyer by the LAD to defend his/her case. As regards criminal appeals, the LAD will carefully consider if there are reasonable grounds for appeal before granting legal aid.

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

(1) As at August 4, 2021, the LAD issued a total of 1 056 legal aid certificates for the criminal cases relating to anti-extradition amendment bill incidents and the total legal costs incurred is around \$42.9 million, involving 311 legal aid cases. Among which, the highest legal cost for one single legal aid case (involving one aided person) is around \$1.3 million.

(2) Section 8(2)(g) of the Legal Aid Regulations (the Regulations) provides that the Director of Legal Aid (DLA) may discharge a legal aid certificate where an aided person has been outside Hong Kong for a continuous period exceeding six months. In exercising the power under the above provision, the DLA will not only consider the period of time during which the aided person is absent from or staying outside Hong Kong, he will also assess the reasons of the aided person for his/her prolonged absence from, as well as the adverse impact on the progress of the aided proceeding and the use of public funds in order to determine whether to discharge the legal aid certificate of the aided person.

For the legally aided appeal against judicial review mentioned in the question, the LAD granted the legal aid certificate on September 7, 2020, which was less than five months before the appeal case was heard in the Court of Appeal on February 5, 2021. Therefore, this case has not met the statutory time requirement (over six months) of the above Regulation.

(3) According to sections 26 and 26A of the Ordinance, any applicant for legal aid who is aggrieved by any order or decision of the DLA in relation to an application for legal aid may appeal to the Registrar of the High Court (the Registrar) or to a Review Committee chaired by the Registrar in relation to an appeal or application for leave to appeal to the Court of Final Appeal. The decision of the Registrar or the Review Committee is final.

Each appeal against the DLA's decision on any legal aid application is considered and determined independently by the Registrar on the basis of the facts, information and justifications put forward by the applicant in the submissions lodged for the appeal, with reference to the relevant provisions of the Ordinance.