

LCQ9: Ensuring the impartiality of prosecutors

Following is a question by the Dr Hon Priscilla Leung and a written reply by the Secretary for Justice, Ms Teresa Cheng, SC, in the Legislative Council today (December 4):

Question:

Since the eruption of the movement of opposition to the proposed legislative amendments (the movement) in June this year, there have been persons, one after another, being charged with various offences. It has been reported that some persons, claiming to be "a group of prosecutors" within the Department of Justice (DoJ), issued an anonymous open letter on July 31 this year using the DoJ's letterhead, criticising the ways in which senior personnel of the DoJ dealt with the cases involving large-scale public events. Besides, in a case mentioned at the Eastern Magistrates' Courts on November 4 this year, as the name of one of the five defendants stated in the DoJ's consent to prosecution was wrong and discrepancies were found between the Chinese and English versions of an offence, all of the five defendants had the charges against them withdrawn by the prosecution and were released at the Court. In this connection, will the Government inform this Council:

(1) whether the DoJ has conducted an internal investigation into the aforesaid open letter, including the identity of the senders of the letter; if so, of the details; if not, the reasons for that;

(2) whether the DoJ has compiled statistics on the number of prosecutions relating to the movement so far where errors have been found in the relevant internal procedure or prosecution documents; if so, of the details; and

(3) of the DoJ's measures to ensure that prosecutors uphold the principles of impartiality, probity and care in dealing with prosecutions relating to the movement?

Reply:

President,

As the Secretary for the Civil Service (SCS) has recently reiterated to the public, the Government has always attached great importance to the conduct of civil servants. According to the Civil Service Code (the Code) issued by the Civil Service Bureau (CSB), civil servants are required to uphold the core values of commitment to the rule of law, honesty and integrity, objectivity and impartiality, political neutrality, etc. The Government has an established mechanism for handling the civil service disciplinary matters. Generally speaking, where there is any act, conduct or behaviour of an officer which contravenes the Code or government regulations,

their respective department will take appropriate follow-up actions in accordance with established procedures. If there is evidence that a civil servant has misconducted himself upon investigation, or a civil servant has been convicted of criminal offence by the Court, the management will take appropriate disciplinary action, including imposing disciplinary punishment of verbal warning, written warning, reprimand, severe reprimand, reduction in rank, compulsory retirement and dismissal, etc.

The above mechanism is applicable to civil servants of different grades and ranks including prosecutors of the Department of Justice (DoJ).

In relation to the Dr Hon Priscilla Leung's question, the DoJ's reply after consulting the CSB is as follows:

(1) According to the Code, all civil servants should uphold the rule of law and the administration of justice, and always observe due process. Civil servants shall also ensure that no actual, perceived or potential conflict of interest shall arise between their official duties and private interests. They shall also ensure that their personal views expressed would not impede their performance of official duties in a professional and fair manner. Prosecutors of the DoJ, as civil servants, should also comply with these rules. In view of recent social events, SCS issued letters to all civil servants twice in August and November this year respectively, reminding that they must remain politically neutral. The DoJ has also separately reminded all staff of the Department the above principles.

Insofar as the Prosecutions Division of the DoJ is concerned, according to paragraph 1.2 of the publicised Prosecution Code, a prosecutor must not be influenced by any investigatory, political, media, community or individual interest or representation. As prosecutors of the DoJ, they shall ensure that their duties are discharged in a professional and impartial manner without being affected by their political assertion and personal views expressed. They shall remain independent and impartial. Therefore, prosecutors shall, before expressing their views in public, first consider whether such views would affect public perception towards the independence of the prosecutors of the DoJ, especially when there is a likelihood of handling relevant cases in future.

On the other hand, following the guidelines issued by the Administration Wing, each department has established clear and comprehensive procedures for handling complaints against the department. All complaints, whether signed or anonymous, will be duly processed by the receiving department. For anonymous complaints, if the complaint itself does not contain sufficient information and where the complainant cannot be reached to provide further details, it might be difficult for the department concerned to conduct effective investigation or follow up.

The DoJ has been handling each complaint, including the open letter referred to in the question, in accordance with the above guidelines. We note the open letter was issued by persons claiming to be "a group of prosecutors" within the DoJ using a letterhead appearing to be the DoJ's. However,

expressing views in such anonymous way makes it difficult to trace the real identities of persons concerned for follow up with them and impossible to verify the allegations in the letter. After comprehending the overall situation, I and the Director of Public Prosecutions (DPP) have earlier made a bold statement to dismiss such completely groundless allegations.

(2) The DoJ does not maintain the relevant figures.

Generally, when conducting prosecutions, including handling prosecution documents, prosecutors of the DoJ are required to act prudently in strict accordance with the law and the Prosecution Code. They are obliged to apply the highest of standard in their handling of all criminal cases. Regarding the handling of the case mentioned at the Eastern Magistrates' Courts on November 4 this year, the DoJ had made submissions to the Court, which were accepted by the Court. As the defendants concerned have been immediately arrested and charged, and the relevant legal proceedings remain ongoing, it is not appropriate for the DoJ to comment further.

(3) As pointed out in the preamble and part (1) of the reply above, civil servants are required to comply with the relevant Code and regulations, as well as additional regulations issued by their respective departments. When civil servants express their views, they should also ensure that their views would not give rise to any conflict of interest with their official duties or might not be seen to be biased when discharging their duties.

Civil servants' performance is assessed in an honest, objective and comprehensive manner in their appraisal reports. The Government will take appropriate actions on any misconduct committed by civil servants in accordance with the established procedures, including imposing disciplinary punishment on the officers concerned. If the case reveals that an officer is suspected of committing a criminal offence, the case will be referred to the relevant law enforcement agency to follow up. All civil servants of the DoJ, including prosecutors, are also subject to the same mechanism.

I must emphasise that prosecutors of the DoJ always abide by Article 63 of the Basic Law and shoulder the constitutional duty enshrined therein, and handle all prosecution work in a fair, impartial and highly transparent manner. Article 63 of the Basic Law provides that "the DoJ of the Hong Kong Special Administrative Region shall control criminal prosecutions, free from any interference".

All investigations of criminal cases are conducted by law enforcement agencies which will, when necessary, refer to the DoJ for independent decisions on whether to prosecute. The Prosecution Code provides reference points and guidance for prosecutors. They should at all times exercise integrity and care. The independence, role and duties of prosecutors are set out in the Prosecution Code. One of the basic principles set out in paragraph 3.1 of the Code is:

"A prosecutor is required to comply with and promote the rule of law. A prosecutor acts on behalf of the community in an impartial manner and as a

'minister of justice'. To this end, a prosecutor must fairly and objectively assist the court to arrive at the truth and to do justice between the community and the accused according to law."

In deciding whether or not to prosecute, the DoJ must make an objective and professional assessment of the available evidence and applicable law, and act in accordance with the Prosecution Code.

The Secretary for Justice, the DPP and the prosecution team have all along been discharging their prosecutorial duties fairly and without prejudice or favour in accordance with the above principles so as to safeguard criminal justice.