

SJ's speech at Ceremonial Opening of Legal Year 2024

Following is the speech by the Secretary for Justice, Mr Paul Lam, SC, at the Ceremonial Opening of the Legal Year 2024 today (January 22):

Chief Justice, members of the Judiciary, Chairman of the Bar Association, President of the Law Society, distinguished guests, ladies and gentlemen,

To begin with, I am sure we are all very delighted at the attendance of fellow judges, legal professionals and friends from not just Hong Kong but also the Mainland and overseas at today's ceremony, many of whom were prevented from attending this important annual event in the last few years due to the pandemic. In 2023, Hong Kong has emerged from the pandemic; and is now advancing from stability to prosperity. The future of Hong Kong hinges on the thorough and accurate implementation of the "one country, two systems" principle. The fundamental purpose of this principle is to safeguard China's sovereignty, security and development interests and to maintain the long-term prosperity and stability in Hong Kong. To achieve this purpose, Hong Kong must maintain its distinctive status and advantages.

One distinctive and irreplaceable characteristic of Hong Kong is undoubtedly its common law system with strong international elements, which enjoys an exemplary reputation around the world. An essential component of this common law system is the Judiciary which is given independent judicial power, including that of final adjudication by the Basic Law. Today's ceremony provides the most pertinent opportunity to pay tribute to the indispensable role played by the Judiciary to the successful implementation of the principle of "one country, two systems" in Hong Kong.

Without security and stability, there cannot possibly be prosperity. To safeguard our country's sovereignty and security, the Judiciary is under a constitutional duty to effectively prevent, suppress and impose punishment for any act or activity endangering national security. The Judiciary discharges such constitutional duty by exercising its judicial power independently whenever national security issues are raised before the court. In particular, it is duty-bound to ensure that defendants charged with national security offences will receive a fair trial; and that their guilt will be determined in accordance with the relevant law and evidence only, nothing more and nothing less. It is, therefore, of utmost importance to ensure that the Judiciary will

in fact be able to exercise its judicial power without any interference in national security cases as in any other types of cases.

The best way to test whether the Judiciary has been able to do so is to ascertain how and on what grounds the court decided those cases. All court hearings relating to national security are, generally speaking, held openly. More importantly, all decisions and judgments made by the court in this respect are publicised on the Judiciary's website, which is accessible for free. People will have no difficulty in following the court proceedings, and studying the reasons for the court's decisions and judgments. The real problem is that many people did not bother to do so before passing their own judgements. For any reasonable and objective bystander who is eager to seek the truth, he or she will not see one iota of evidence that the Judiciary's independent judicial power has been compromised in cases involving national security.

That said, we must be mindful of the unfortunate fact that there were, and will likely be, threats to the Judiciary's independent judicial power from other countries. For instance, in November last year, politicians in a western country (and their supporters) proposed to impose sanctions on Judges and Judicial Officers handling national security cases. Such political manoeuvres appear to aim at achieving two purposes: first, to smear the national security law applied in Hong Kong and, second, which is even more sinister, to exert pressures on our Judges and Judicial Officers, trying to deter them from taking part in national security cases or influence them on how they would handle such cases.

The HKSAR (Hong Kong Special Administrative Region) Government responded immediately by issuing a strong statement to condemn such act, which constituted a blatant attempt to damage the rule of law in Hong Kong. The Central People's Government, the Judiciary itself and other sectors of the Hong Kong society issued similar statements. Insofar as those people making or supporting the above-mentioned or any similar threat claimed that they are concerned about the rule of law in Hong Kong, one cannot imagine a higher degree of hypocrisy.

We should be grateful to, and proud of, our Judges and Judicial Officers who have continued to do their jobs faithfully in accordance with the Judicial Oath, as is always the case. Indeed, the best way to handle any such improper interference is to stay calm and composed, carrying on with our respective duties; and at the same time, to maintain and promote the transparency of the judicial process. I wish to make it very clear that the HKSAR Government will do its best and take whatever measures within

its powers to ensure that Judges and Judicial Officers will be able to perform their judicial functions without fear from intimidation.

Turning to safeguarding the development interests of China, and to maintain the long-term prosperity and stability of Hong Kong, the HKSAR Government and the Judiciary have been working closely to enhance Hong Kong's status as an international legal and dispute resolution services centre. While it is essential to maintain a clear demarcation between the legal system of the Mainland and that of Hong Kong, it is necessary to construct linkages between the two systems so that the unique advantages offered by Hong Kong's common law system may be fully utilised to serve the national interests of China as a whole. This is achieved by, among other things, the conclusion and modification of different types of mutual legal assistance arrangements in civil and commercial matters between the Mainland and Hong Kong. For example, to implement the Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters, the Mainland Judgments in Civil and Commercial Matters (Reciprocal Enforcement) Ordinance enacted in October 2022, together with its subsidiary rules and Practice Direction, will come into operation next Monday on January 29, 2024. This arrangement is similar to The Hague Convention of July 2, 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters but its scope is even wider such as, for example, it includes some intellectual property judgments which are completely excluded from The Hague Convention. Another example is that the Supreme People's Court of the PRC (People's Republic of China), the Judiciary and the Department of Justice are working hard to revise the Arrangement for Mutual Service of Judicial Documents in Civil and Commercial Proceedings between the Mainland and Hong Kong Courts which was concluded back in 1999 in the hope that a better arrangement could be concluded in the early part of this year.

Fellow residents in Hong Kong will repose trust and confidence in our judicial system only if it is affordable and able to resolve legal disputes within a reasonable time. One big challenge faced by the Judiciary is its heavy workload. To reduce its workload and to encourage people to resolve their disputes in a more effective and economical manner, the Judiciary has been promoting mediation vigorously. To support the Judiciary in this respect, one of the policy initiatives set out in the Chief Executive's 2023 Policy Address announced in October last year is to deepen the mediation culture. To be more specific, the HKSAR Government intends to strengthen the regulatory system on the accreditation and disciplinary matters of the mediation profession, incorporate standard mediation clauses in government

contracts, and encourage private organisations to incorporate similar clauses in their contracts.

Regarding mediation, it is worth mentioning that China is negotiating with a number of countries on the establishment of an International Organization for Mediation. In last November, upon the HKSAR Government's express of interest, the Central People's Government supported and submitted a bid to the International Organization for Mediation Preparatory Office to host the International Organization for Mediation headquarters in Hong Kong by converting the Old Wan Chai Police Station to such purpose. It is expected that a decision will be made early this year at the earliest.

The need to maintain and promote people's trust and confidence in our legal and judicial system has become more acute when false and misleading allegations appear from time to time in this respect, very often prompted by the complex and volatile geopolitics. We must bear in mind that people's trust and confidence must be founded upon a sufficient and proper understanding of how our legal and judicial system actually operates. For this reason, in the coming year, the Department of Justice will continue the work of the Steering Committee on Rule of Law Education, including the launch of the second phase of the Rule of Law Education Train-the-Leaders Programme.

I said all these things to make one important point. Owing to the fact that the HKSAR Government and the Judiciary play different roles under our constitutional order, as well as the need to maintain the Judiciary's independent judicial power both as a matter of reality and perception, there must be a separation between the two. But such separation must not mask the fact that we are close allies in defending, maintaining and promoting the rule of law in Hong Kong, enhancing people's trust and confidence in our legal and judicial system, and ensuring that Hong Kong's common law system can achieve the fundamental purpose of the principle of "one country, two systems".

The rule of law in Hong Kong is attributed substantially to its judiciary, which enjoys an excellent reputation that it well deserves. It is not only a good, but also true, Hong Kong story. It is a good and true Hong Kong story based on objective facts. It is a good and true Hong Kong story that must continue. Notwithstanding challenges ahead that we must not underestimate, I wish to call upon all of you who care about and love Hong Kong (whether Judges and Judicial Officers, Government Counsel,

private practitioners and other interested parties) to co-author an even better chapter of this good and true Hong Kong story with confidence and solidarity.

Last but not least, as we are going to celebrate the Chinese New Year of the Dragon in about two weeks' time, may I take this opportunity to wish you and your families a happy and healthy Year of the Dragon!

Ends/Monday, January 22, 2024