

立法會
Legislative Council

LC Paper No. CB(2) 2291/01-02

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by the Administration)

Ref : CB2/PL/SE/1

LegCo Panel on Security

**Minutes of special meeting
held on Monday, 15 April 2002 at 10:45 am
in Conference Room A of the Legislative Council Building**

Members present : Hon James TO Kun-sun (Chairman)
Hon LAU Kong-wah (Deputy Chairman)
Hon Albert HO Chun-yan
Dr Hon LUI Ming-wah, JP
Hon Margaret NG
Hon CHEUNG Man-kwong
Hon Howard YOUNG, JP
Hon Ambrose LAU Hon-chuen, GBS, JP
Hon IP Kwok-him, JP

Members absent : Hon Mrs Selina CHOW LIANG Shuk-ye, JP
Hon Andrew WONG Wang-fat, JP
Hon WONG Yung-kan
Hon Audrey EU Yuet-mee, SC, JP

Public Officers attending : Item I

Mr Timothy TONG, JP
Deputy Secretary for Security 1

Mrs Margaret CHAN
Principal Assistant Secretary for Security A

Mr YAM Tat-wing
Assistant Commissioner of Police (Crime)
Hong Kong Police Force

Mr MA Wai-luk
Senior Superintendent, Crime Headquarters
Hong Kong Police Force

Clerk in attendance : Mrs Sharon TONG
Chief Assistant Secretary (2)1

Staff in attendance : Mr Raymond LAM
Senior Assistant Secretary (2)5

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I. Follow-up on allegations of Mainland Public Security officials exercising jurisdiction in Hong Kong - the case of SU Zhi-yi
(LegCo Paper Nos. CB(2) 2370/00-01, CB(2) 1094/01-02(01), CB(2) 1481/01-02(08) and CB(2) 1541/01-02)

At the invitation of the Chairman, Deputy Secretary for Security 1 (DS for S1) and Assistant Commissioner of Police (Crime) (ACP(C)) presented the Administration's paper on the findings of further investigations by the Hong Kong Police Force (the Police) into allegations made by SU Suet, daughter of SU Zhi-yi, that Mainland Public Security officials had exercised jurisdiction in Hong Kong on 28 October 1995, 4 and 12 January 1996. DS for S1 informed members of the following

- (a) Immigration records indicated that the entry and departure times of some Zhaoqing Public Security officials and Zhaoqing City Government officials were close to those of SU Suet and SU Zhi-yi;
- (b) The Guangdong Provincial Public Security Bureau (GDPSB) had reiterated that all Public Security authorities in the Guangdong Province were required to strictly comply with the instructions issued by the Ministry of Public Security and the GDPSB for dealing with cases that involved police cooperation between the Mainland and the Hong Kong Special Administrative Region (HKSAR). Mainland Public Security officials were prohibited from visiting Hong Kong to undertake any police activities without prior notification of and liaison with the Police; and
- (c) There was insufficient evidence to substantiate SU Suet's allegations that Mainland Public Security officials had exercised jurisdiction in Hong Kong.

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2. Mr CHEUNG Man-kwong said that the information provided in Annex A to the Administration's paper reflected that when SU Zhi-yi or SU Suet entered Hong Kong, at least one of their family members were held in the Mainland. A transfer of property rights then took place at a later time before SU Zhi-yi and his wife were finally sentenced to imprisonment.

3. Mr CHEUNG Man-kwong referred to the reference materials related to the case of SU Zhi-yi (LC Paper No. CB(2) 2370/00-01) issued on 4 October 2001 and pointed out that -

- (a) The complaint materials provided by SU Suet indicated that :
 - (i) Solicitors from some Hong Kong solicitor firms had visited SU Zhi-yi and his wife at a detention centre in Zhaoqing and requested them to sign on documents authorising the transfer of their private property rights to others;
 - (ii) The Law Society of Hong Kong had designated a solicitor to investigate into complaints against the solicitor firms involved in the transfer of the property rights of SU Zhi-yi and his wife to others; and
 - (iii) Zhaoqing Public Security officials had videotaped their search in SU Zhi-yi's residence in Hong Kong on 28 October 1995;
- (b) It was stated in the legal advice provided by the lawyer of SU Zhi-yi and his wife that the Zhaoqing Public Security Bureau had issued a search warrant for a search in SU Zhi-yi's residence in Hong Kong; and
- (c) There was a mention of a search warrant in connection with the search of Zhaoqing Public Security officials in Hong Kong in page 11 of the judgment (刑事裁定書) issued by the Higher People's Court of Guangdong Province (廣東省高級人民法院) on 27 October 2000. Page 17 of the same judgment also stated that the Zhaoqing Public Security officials' search in SU Zhi-yi's residence in Hong Kong was a fact and that reference could be made to the relevant evidence.

4. In view of the above observations, Mr CHEUNG Man-kwong asked whether the Police had -

- (a) Sought to contact the solicitor firms concerned and The Law Society of Hong Kong; and
- (b) Sought clarification from the Mainland authorities whether a search warrant had been issued for a search in SU Zhi-yi's residence in Hong

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Kong, whether a search had actually taken place and whether there was a videotape in respect of the alleged search in the residence of SU Zhi-yi in Hong Kong.

5. ACP(C) responded that the Police's further investigation into the case had addressed all the requests made by members at the special meeting of the Panel on 16 January 2001. As he had stated at that meeting, the transfer of property rights was made under formal procedures in the presence of lawyers from both sides who had confirmed with the Police that SU Zhi-yi and his family members were not under threat in the transfer of property rights. He added that the Police had not sought the Mainland authorities' clarification about whether a search warrant had been issued and whether a videotape of the search was presented before the court because GDPSB had already stated that no Public Security officials visited Hong Kong at the material time in connection with SU Zhi-yi's case.

6. ACP(C) added that assistance between the police of Hong Kong and that of other jurisdictions were undertaken in accordance with an established mechanism. Under the mechanism, the requesting party had to give prior notification to the requested party and explain clearly the nature of the case and the scope of assistance sought. The law enforcement officers of the requested party would then undertake investigation work in accordance with the law. Where it was necessary for police officers of the requesting party to interview a witness, arrangement for interview would be made only with the consent of the witness concerned and the interview would be conducted in the presence of law enforcement officers of the requested party. Requests for interviews with the Zhaoqing Public Security officials A, D, E, F and G and Zhaoqing City Government officials B and C were made under such a mechanism.

7. DS for S1 said that the GDPSB had already replied that no Zhaoqing Public Security officials had exercised jurisdiction in Hong Kong or been to SU Zhi-yi's residence in North Point to undertake searches and take evidence. To ask whether a search warrant was issued and whether there was a videotape in respect of the search, despite the reply given by the GDPSB, would imply that the Police did not accept the reply given by the GDPSB.

8. ACP(C) responded that it was stated in the judgment (刑事判決書) issued by the Intermediate People's Court of Zhaoqing City of Guangdong Province (廣東省肇興市中級人民法院) on 5 June 2000 that Zhaoqing Public Security officials had not carried out search or taking of evidence in SU Zhi-yi's residence in Hong Kong.

9. Mr CHEUNG Man-kwong said that the judgment issued by the Higher People's Court of Guangdong Province mentioned that a search warrant had been issued in connection with the search of Zhaoqing Public Security officials in Hong Kong. Thus, the Police should at least seek to clarify with the Mainland authorities whether there was such a search warrant. The Chairman said that seeking such information from the Mainland authorities might assist members in knowing the fact and whether there was a breach of the laws of Hong Kong. He asked whether the Administration

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would follow up the queries raised by members.

10. DS for S1 drew members' attention that the Higher People's Court of Guangdong Province had dismissed in its judgment the allegation that Zhaoqing Public Security officials had exercised jurisdiction in Hong Kong. He stressed that Mainland Public Security officials were strictly prohibited from exercising jurisdiction in the HKSAR. Any breach of this requirement was already unlawful regardless of whether there was a videotape. As the GDPSB had already replied the Police that no Zhaoqing Public Security officials had exercised jurisdiction in Hong Kong, the Administration did not consider it necessary to seek further clarification with the Mainland authorities.

11. Miss Margaret NG said that an examination of the search warrant and videotape referred to in the judgment issued by the Higher People's Court of Guangdong Province might assist members in knowing whether Zhaoqing Public Security officials had exercised jurisdiction in Hong Kong. She considered that if the Administration refused to seek clarification with the Mainland, the protection of Hong Kong residents doing business in the Mainland would be much in doubt.

12. DS for S1 responded that further investigation would be considered only if there was inconsistency between the reply provided by the Mainland authorities and the findings of the Police. However, the reply given by the Mainland authorities and the findings of the Police's investigations indicated that the case could be concluded. He added that the confidence of Hong Kong residents doing business in the Mainland was reflected in their huge investments in the Mainland.

13. Miss Margaret NG said that any person could notice from the information provided in the Administration's paper that there was circumstantial evidence about Mainland Public Security officials exercising jurisdiction in Hong Kong.

14. DS for S1 responded that the Administration did not consider that the information showed substantive evidence. He said that although the entry and departure times of some Zhaoqing Public Security officials were close to those of SU Zhi-yi and SU Suet, it was not conclusive proof that Mainland Public Security officials had exercised jurisdiction in Hong Kong or involved in the investigation on SU Zhi-yi's case. Thus, the Administration had set out the findings of its investigations without drawing a definite conclusion in respect of whether Mainland Public Security officials had exercised jurisdiction in Hong Kong. He further said that it was already four years after the alleged incidents had occurred when SU Suet first made her allegations.

15. Mr Albert HO said that it was not only a matter of safety of Hong Kong residents doing business in the Mainland, but a matter of whether the jurisdiction of Hong Kong was undermined. He considered that the information provided in the Administration's paper indicated that there were too many coincidences, such as the

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entry and departure times of some Zhaoqing Public Security officials being close to those of SU Zhi-yi and SU Suet, and that all these officials visited Hong Kong on personal affairs during that period. It was very unusual that SU Zhi-yi could return to his residence in Hong Kong voluntarily while under detention in the Mainland. He said that as the clarification of queries raised by members might assist them to know whether Zhaoqing Public Security officials had exercised jurisdiction in Hong Kong, the Police should at least try its best to seek clarification on the queries with the Mainland authorities. He said that it was important to identify the facts and, if mistakes were identified, to ensure that similar mistakes would not occur again in the future. Mr Albert HO said that if the Administration decided that it would not follow up the queries raised by members, the Panel should consider how the matter could be followed up.

16. Dr LUI Ming-wah said that information available reflected that SU Zhi-yi and SU Suet were accompanied by Zhaoqing City Government officials during their entries into and departures from Hong Kong. Moreover, the Mainland authorities had replied that the Zhaoqing Public Security officials concerned visited Hong Kong on personal affairs at that time. There was also no evidence proving that these Public Security officials were involved in activities related to SU Zhi-yi or SU Suet. Thus, it was doubtful whether seeking further clarification from Mainland authorities would be of any use. He added that even where the videotape in question was identified, it was difficult to verify the identity of the person who performed videotaping.

17. The Chairman considered that if the videotape was identified, it would at least be possible to examine whether SU Suet or SU Zhi-yi was forced to allow other persons to search their residence in Hong Kong.

18. The Chairman said that although it was concluded in the judgment issued by the Higher People's Court of Guangdong Province that the allegation of Zhaoqing Public Security officials exercising jurisdiction in Hong Kong was dismissed, it was mentioned on page 17 of the same judgment that SU Zhi-yi and SU Suet were escorted (押) by Zhaoqing Public Security officials to Hong Kong for searches in their residence and a bank. The same judgment also made reference to a search warrant. As these were mentioned in a judgment of the highest court of the Guangdong Province, the Administration should seek to look at or clarify these matters and examine whether such matters indicated a breach of the laws of Hong Kong.

19. The Chairman said that advice might be sought from the Legal Adviser or experts in Chinese laws on the follow-up actions that could be taken by the Panel, such as requesting the Supreme People's Court or the Ministry of Public Security to look into the queries raised by members.

20. Mr CHEUNG Man-kwong said that if the Administration sought to conclude its work on the matter without convincing justification and clarification of the points of doubt, he would pursue the matter to the highest level as long as he was a Legislative Council Member. While he had no intention to meddle in the judgment of Mainland

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courts on cases of business disputes within their jurisdiction, he was very concerned whether Mainland Public Security officials had exercised jurisdiction in Hong Kong. He further said that the Administration should not underestimate the impact of the matter on the accession of China to the World Trade Organisation. He pointed out that some Mainland authorities or Public Security officials might sometimes make mistakes due to misinterpretation of the law. If investigation revealed a previous mistake, it might be necessary to remind the relevant authorities so that similar mistakes would not occur again in the future. He suggested that the Administration should reconsider members' views on the matter.

21. Miss Margaret NG said that the public's confidence in law enforcement by the Administration was built upon whether there was consistency in law enforcement, no restriction on law enforcement and a dauntless Police. Such confidence would be seriously undermined if there were double standards or restrictions in law enforcement, or if the Police was not dauntless.

22. The Chairman said that it had been seven years since the alleged incidents occurred and there had been a lot of improvement in the Mainland during this period. However, the attitude of the Security Bureau and the Police towards identifying the facts about this past incident would affect his confidence in the Administration.

23. DS for S1 said that there was certainly no restriction in law enforcement. However, there was a stage when the investigation of a case had to be concluded. He stressed that the Higher People's Court of Guangdong Province had dismissed in the conclusion of its judgment the allegation that Zhaoqing Public Security officials had exercised jurisdiction in Hong Kong. He also stressed that the Administration was committed to the protection of Hong Kong residents doing business in the Mainland. However, he doubted whether it was appropriate to base on some partial information and apply a different standard to draw conclusion on a matter on which another jurisdiction had drawn a conclusion. He said that the Administration did not see any reason for a change in its position. Nevertheless, in view of members' request, the Administration would reconsider whether to follow up the queries raised by members in relation to the case of SU Zhi-yi.

24. Members requested the Administration to provide a written response on whether it would follow up the queries raised by members. Members agreed that the Panel would consider how the matter should be followed up when the Administration's response was received. Members also agreed that the Legal Adviser be requested to provide a paper on the channels through which the Panel could follow up the matter with the Mainland authorities, if the Administration decided not to follow up the queries raised by members.

(Post-meeting note : The Administration's response was circulated to members vide LC Paper No. CB(2) 2038/01-02 on 22 May 2002.)

25. The meeting ended at 12:30 pm.

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Council Business Division 2
Legislative Council Secretariat
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