

立法會
Legislative Council

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Panel on Administration of Justice and Legal Services

Paper for meeting on 23 May 2005

Budgetary arrangements for the Judiciary

Background

At the meeting on 25 April 2005, the Panel discussed the budgetary arrangements for the Judiciary with representatives from the Judiciary Administration and the Administration.

2. Members expressed concern that the constitutional responsibility of the Judiciary for administering justice and upholding the rule of law would be affected by budgetary constraints. Members noted that the savings measures introduced by the Judiciary to cope with budgetary constraints since 2003-04, such as the closure of Magistrates' Courts and reduction in the number of judges and temporary judges, had already brought about problems in the face of increasing workload, i.e. the lengthening of waiting times at all levels of court. Further savings measures introduced to minimise the impact on waiting times, such as Saturday sittings in Magistrates' Courts and the District Court, would pose additional strain on judges and judicial officers and might adversely impact on the quality of justice. The Judiciary was exploring a number of options to address the situation which was no longer considered acceptable.

3. The Administration advised members that in addition to the constitutional safeguards under the Basic Law to protect the independent operation of the Judiciary, it would also observe the relevant provisions of the Beijing Statement of Principles of the Independence of the Judiciary which provided, among other things, that the needs of the Judiciary and the court system be accorded a high level of priority in the allocation of resources for the purpose of the maintenance of the rule of law when there were economic constraints.

4. At the meeting, members made a number of suggestions concerning the budgetary arrangement for the Judiciary. The Panel requested the Secretariat, in the light of the discussion, to prepare a paper on members' suggestions for the Panel's consideration. This paper summarises the main considerations and suggestions of members.

Members' considerations and suggestions

5. Members agreed that there should be better protection of the Judiciary's budgetary arrangement to ensure that judicial independence would not be subject to executive influence, and the Judiciary should be provided with adequate resources to administer justice without undue delay. Members considered that the existing arrangement for the Administration to set savings targets to be achieved by the Judiciary, and to determine the approved provisions for the Judiciary in the annual resource allocation exercise, should be reviewed.

6. Members noted that under Article 62(4) of the Basic Law, the Government should draw up and introduce budgets and final accounts. Members considered that there was scope under the Basic Law for the Administration to provide greater flexibility and autonomy for the Judiciary to prepare its budget. Members requested the Administration to consider the following suggestions -

- (a) judicial remuneration should be protected by statute in line with other jurisdictions in which judicial independence is given constitutional importance, as recommended in Sir Anthony Mason's Consultancy Report on "System for the Determination of Judicial Remuneration";
- (b) the Administration should not impose savings targets set for bureaux and departments on the Judiciary, but consult the Judiciary as to what savings targets may be compatible with the proper administration of justice;
- (c) the Judiciary should have autonomy to prepare its own budget on the basis of objective yardsticks, such as existing resources, projected needs, workload and staff remuneration. Members had pointed out that in the United States, the bulk of the funds allotted to individual courts were determined by formulas which were developed by the judiciary as an objective means for determining the workload and resource needs of the judiciary;
- (d) the Administration should formally adopt as a rule of practice that the budgetary proposals of the Judiciary will not normally be reduced;
- (e) the Administration should, in due course, consider the establishment of a consolidated fund to cater for specific resource needs of the Judiciary, e.g. the payment of judicial remuneration. Members considered that a continuing security for the payment of remuneration was a necessary element in safeguarding judicial independence. Members had pointed out that in the United Kingdom, judicial remuneration was paid out of a consolidated fund which was not subject to parliamentary authorisation, any government appropriation process or budget legislation; and

- (f) with respect to the Judiciary's 2006-07 budget, the Administration should give serious consideration to the warning given by the Chief Justice.

Advice sought

7 Subject to the endorsement of the Panel on the suggestions set out in paragraphs 6 above, the Administration will be requested to consider and respond to the suggestions in two months' time.

Council Business Division 2
Legislative Council Secretariat
20 May 2005