

立法會
Legislative Council

LC Paper No. CB(2)205/10-11(05)

Ref : CB2/PL/SE

Panel on Security

**Background brief prepared by the Legislative Council Secretariat
for the special meeting on 11 November 2010**

**Police's handling of public meetings and public
processions, and prosecution of assault on Police officers**

Purpose

This paper provides background information relating to the Police's handling of public meetings and processions, and prosecution of assault on Police officers.

Police's handling of public meetings and processions

Notification system

2. According to the Administration, people in Hong Kong have the right to assemble, to demonstrate, etc. as enshrined in Article 27 of the Basic Law ("BL") and Article 17 of the Hong Kong Bill of Rights ("HKBOR"). It is the Police's duty to facilitate the conduct of lawful and peaceful public meetings and processions.

3. The main statutory provisions regulating public meetings and processions are contained in the Public Order Ordinance (Cap. 245) ("POO"), which provides that a public meeting or procession at which the attendance exceeds the prescribed limit can take place only if notice has been given in accordance with the requirements of POO, and the Commissioner of Police ("CP") has not prohibited or objected to it. CP can prohibit any public meetings or processions if he reasonably considers such prohibition necessary in the interests of national security, public safety and public order, or for the protection of rights and freedoms of others. If the holding of a notified public meeting or procession is considered likely to prejudice the maintenance of public order or to be used for any unlawful purpose, CP must state the grounds of prohibiting or objecting to a public meeting or procession by way of a written notice and notify the organizers of his decision within a specified time limit (e.g. 48 hours before the commencement of the event if seven days' notice is given). If CP does not issue a notice of objection within the time limit, he is taken to have issued a notice of no objection and the meeting or procession can proceed.

CP cannot exercise this power of prohibition if such interests can be met by imposition of conditions. In deciding whether and, if so, what conditions to impose, CP must consider whether such conditions are proportionate.

Appeal Mechanism

4. If CP prohibits, objects to or imposes conditions on a notified public meeting or procession, the organizers have a right of appeal to an independent Appeal Board on Public Meetings and Processions ("the Appeal Board") as provided under POO. The Appeal Board may confirm, reverse or vary the prohibition, objection or condition imposed by CP.

Handling of public meetings and processions

5. According to the Administration, upon receipt of a notification about a public meeting or procession, the Police will establish early contact and maintain an active and close communication with the event organizer to provide advice and assistance. The Police's Community Relations Officers may also be present during an event as appropriate to act as a channel of communication between the organizer and the Field Commander. In assessing the crowd/traffic management measures and manpower required for maintaining public safety and public order during the events, the Police will make reference to the information provided by the organizers, past experience in handling similar events as well as other operational considerations.

Relevant discussions of the Panel on Security

6. Arising from the Police's objection to the League of Social Democrats holding a public procession in the evening of 10 March 2007, the Panel on Security ("the Panel") discussed how the Police processed notifications of public meetings and processions at its meeting on 5 June 2007.

7. Some members queried why objection to the holding of the public procession on 10 March 2007 was made on the ground of low visibility at night. They asked whether visibility was one of the factors considered when CP determined whether to object to an application for public meeting or public procession. They also pointed out that the Korean farmers had staged a number of public meetings and public processions at night when the Sixth Ministerial Conference of the World Trade Organization ("MC6") was held in Hong Kong in December 2005.

8. The Administration responded that as the proposed routing would run through very busy road sections and the procession was scheduled to start in the evening peak hours, the Police objected to the public procession on public safety and public order grounds. Visibility was only one of the factors affecting public safety. The Police had to give regard to the rights and freedom of other members of the public as well as the disruption that the public procession might cause. The Police had suggested that the organizers could advance the public procession to the afternoon of the day but this was not accepted by the organizers. The Administration also informed members

that the routing of all public processions held during the MC6 period had been agreed between the organizers and the Police before the public processions were held.

9. On some members' query as to whether the Police would object to all future applications for holding public processions along the same route and around the same time of the day, the Administration advised that each application had to be considered on its own merits and circumstances. Some members expressed concern that this would give an impression that CP could object to the holding of any public procession at his own will.

10. Some members considered that records on applications for public meetings and public processions should be kept by the Police, as objection to the holding of public meeting or public procession involved restriction of the freedom of people. The Administration responded that the Police's database was developed on a need basis. The Police had been keeping records on public order events since 1997. Between January 1997 and April 2007, 6 393 notified public meetings and 7 416 notified public processions had been held in Hong Kong, representing an average of 3.6 public order events per day.

11. Responding to members' further enquiry as to whether the Police had any record on public meetings and public processions held before 1997 and whether the issue of low visibility had been raised in the Police's previous objections to the holding of public processions, the Administration advised that the Police captured only simple statistics on public meetings and processions before October 1998. Based on available information, from 1984 to 1997, the Police processed a total of 8 273 notified public meetings and 4 611 notified public processions. Of these, the Police prohibited 19 public meetings and objected to 27 public processions. Although it had previously used "low visibility" as a ground for objecting to the holding of public processions, the Police's record showed that from 1998 up to August 2007, there had been no such cases other than the one concerning the public procession which the League of Social Democrats proposed to hold on 10 March 2007.

12. Following the demonstrations outside the Legislative Council ("LegCo") Building on 15 and 16 January 2010, the Administration briefed members on the measures taken by the Police to regulate public meetings and processions at the Panel meeting on 2 February 2010.

13. Members were concerned about the protection for LegCo Members and other people not participating in public meetings and processions, and the capability of the Police in handling large-scale public order events outside the LegCo Building in future. They asked whether the Administration had learned any lesson from the incident.

14. The Administration responded that the freedom or right of peaceful assembly and procession was enshrined in Article 27 of BL and Article 17 of HKBOR. It was the Police's policy to facilitate all lawful and peaceful public meetings and processions.

As Hong Kong was a crowded place, large-scale public assemblies and processions would affect other people or road users, and might have impact on public safety and order. In this connection, while facilitating the expression of views by participants of processions, it was also the Police's responsibility to maintain public order and ensure the rights of other people to use the public place or road as well as their safety.

15. The Administration emphasized that participants of public processions, in expressing their views to the public, should observe the law and public order. The Police would not tolerate violence during public order events. On occasions where the law was, or was likely to be, violated during public meetings or processions by acts of individuals (especially when there were acts which might cause danger to others or acts which led to a breach of the public order), the Police would, based on the assessment at scene and professional judgment, issue verbal warnings where appropriate. Depending on whether the person involved had ceased the illegal acts and whether his acts led to a breach of public order, or even affected public safety, the Police would, depending on the situation, take appropriate actions at scene. These actions included issuing verbal warnings or orders at scene, collection of evidence for subsequent investigation and consideration of prosecution, peaceful dispersal of the crowd or other law enforcement actions.

16. The Administration further advised that whenever a large-scale public meeting or procession was held, the Police would carry out a review after the event. The aim of the review was to ensure that the tactics deployed and the use of force in the demonstrations and public assemblies concerned were justified and complied with the Police's operational guidelines for regulating public order events. If there were conflicts and confrontations, the Police would investigate into the incidents concerned to ascertain whether there were reasonable grounds to arrest any persons for having breached the laws. The Police would consult the Department of Justice ("DoJ") to ascertain whether there was sufficient evidence for instituting prosecution.

17. Some members queried the propriety of using pepper spray against demonstrators and the effectiveness of the Police's liaison with the organizer of the public meeting on 16 January 2010. They also queried the effectiveness of the deployment of mills barriers to barricade certain areas and streets in the vicinity of the LegCo Building to stop the demonstrators from marching on the street, which resulted in disputes and confrontations between the demonstrators and the Police. A member suggested that the Administration should review its guidelines regarding the deployment of mills barriers during large-scale public order events. To minimize the potential harm that might be caused to demonstrators and Police officers, the Administration should also consider replacing the metal mills barriers with those made of other materials. Some other members pointed out that some demonstrators were found cooking with naked flame and selling food within the demonstration area, posing danger to the safety of other demonstrators and people in the LegCo Building and its vicinity. These members considered that while facilitating the expression of views by demonstrators, it was also the Police's responsibility to maintain public order and ensure the safety of other people.

18. The Administration advised that in the evening of 16 January 2010, in view of the large number of demonstrators staging demonstrations outside the LegCo Building, the Police had set up mills barriers in certain areas and streets in the vicinity of the LegCo Building to ensure the safety of the demonstrators, other people, LegCo Members and government officials attending meetings in the LegCo Building. A few police lines were stationed at the mills barriers, which were set up as a basic security measure, to prevent any unauthorized persons from entering the LegCo Building. Late in the same evening, some participants of the public meeting had become antagonistic and besieged the LegCo Building on all sides and blocked the driveway. Taking into account the chaotic situation at that point in time, the Police had deployed pepper spray on the demonstrators when they made several attempts to break through the Police lines by pushing and climbing over the mills barriers. The Police had examined the justifications and propriety of the use of force after the 16 January 2010 incident. The preliminary findings concluded that the Police's use of force during the event was justified and the degree of force used was appropriate.

19. In response to some members' criticism that the Police had used excessive force in the removal of demonstrators, the Administration emphasized that the Police had all along been upholding the principles of exercising maximum restraint and using minimum force in facilitating public order events and dealing with violent incident. According to the Police's internal guidelines on the use of force, a Police officer should display self-discipline and exercise a high degree of restraint when dealing with the public and should not resort to the use of force unless such action was strictly necessary and he was otherwise unable to effect his lawful purpose. Police officers should identify themselves as such and, when circumstances permitted, a warning should be given of the intention to use force and of the nature and degree of force which it was intended to use.

20. Members were informed that it was a general practice of the Police to maintain close communication with the event organizers and discuss with them how order could be maintained on the day of the public meeting or public procession. The event organizers were responsible for arranging wardens to maintain order during the public meeting or public procession. Apart from providing advice in advance and agreeing on certain arrangements in relation to the event, a Police Community Relations Officer might also be present during the event to act as a channel of communication between the organizer and the Field Commander. In assessing the crowd management measures and manpower required for maintaining public safety and public order during the event, the Police would make reference to the information provided by the organizer, past experience in handling similar events as well as other operational considerations. For the public meetings on 16 January 2010, the Police stressed that it had maintained communication with the organizer throughout the event.

Relevant Council question

21. Hon WONG Yuk-man raised a question relating to the Police's handling of a public procession on 1 October 2010 at the Council meeting on 10 November 2010.

The question and the Administration's reply will be forwarded to members once available.

Prosecution of assault on Police officers

Guidelines regarding the application of section 63 of the Police Force Ordinance and section 36 of the Offences Against the Person Ordinance in prosecutions against assaulting Police officers

22. According to the information provided by the Administration to the Panel in July 2009, when considering whether prosecution should be instituted under section 63 of the Police Force Ordinance (Cap. 232) or section 36 of the Offences Against the Person Ordinance (Cap. 212) ("OAPO") against an individual for assaulting a Police officer, DoJ will follow the charging practice and procedure laid down in "The Statement of Prosecution Policy and Practice" published by the Department. The Statement stipulates, in particular, that there must be available admissible evidence which supports all the ingredients of the offence charged. DoJ will decide on the charge having regard to all relevant considerations, including the principle that the charges laid should adequately reflect the gravity of the accused's conduct. Where the evidence discloses an offence against several different laws, DoJ will exercise care in deciding on a charge or charges which adequately reflect the nature and extent of the criminal conduct disclosed by the evidence and which will provide the court with an appropriate basis for sentence. In assessing the gravity of the accused's conduct, DoJ will take into consideration the circumstances in which the assault is committed, including whether injuries have been sustained, whether there is pre-meditation, the manner of the assault, the conduct leading up to the assault, and whether the assailant has previous records of violence, etc.

23. If any person is suspected to have assaulted a Police officer in a public meeting or public procession, the Police will seek legal advice on whether prosecution should be instituted based on the circumstances of the case and the evidence in hand. DoJ will adopt the criteria set out in paragraph 22 above when considering independently whether to initiate prosecution in the case concerned, and if so, the offence for which the person concerned should be prosecuted.

Police's consideration for charging persons for assaulting Police officers

24. Section 36 of OAPO stipulates that any person who assaults any person with intent to commit an arrestable offence; or assaults, resists or willfully obstructs any Police officer in the due execution of his duty or any person acting in aid of such officer; or assaults any person with intent to resist or prevent the lawful apprehension or detention of himself or of any other person for any offence shall be guilty of an offence. The Police will initiate arrest action on the basis of sufficiency of evidence to prove that a person has assaulted, resisted or willfully obstructed a Police officer in execution of his duty and the seriousness of his act. As set out in paragraph 23 above, the Police will seek legal advice on whether prosecution should be instituted based on

the circumstances of the case and the evidence in hand.

Sentences handed to Ms Amina BOKHARY

25. There have been media reports in early August 2010 about a court case involving Ms Amina Mariam BOKHARY who assaulted a Police officer after a traffic accident in January 2010. Concerns have been raised on how charges are laid against those accused of assaulting Police officers and whether every member of the community remained equal in the eyes of the law. The relevant press reports concerning Ms BOKHARY's sentences and DoJ's responses to media enquiries issued on 6 and 11 August 2010 are in **Appendices I and II** respectively.

Relevant Council question

26. Hon Emily LAU Wai-hing raised a question on prosecution policy on assault on Police officers at the Council meeting on 27 October 2010. The question and the Administration's reply are in **Appendix III**.

Relevant papers

27. Members are invited to access the LegCo website (<http://www.legco.gov.hk>) for details of the relevant papers and minutes of the meetings.

Council Business Division 2
Legislative Council Secretariat
5 November 2010



No jail for judge's niece after third assault on police

The niece of a top judge was spared jail yesterday after being convicted of assaulting police for a third time. The decision brought a mixed response from police unions but sparked an outcry on a radio talk show.

Amina Mariam Bokhary, 34, whose uncle is Mr Justice Kemal Bokhary of the Court of Final Appeal, was put on probation for a year by Magistrate Anthony Yuen Wai-ming for slapping a police officer after a car accident on January 27.

Yuen said assaulting police and failing to take a breath test, which Amina Bokhary also admitted, were serious offences that usually called for immediate custodial sentences.

"But {hellip} the defendant has a good background, a well-off family, good education and outstanding academic achievement {hellip} with a first-class honour in bachelor of business administration," he said. "And most importantly, [she] has caring and concerned parents."

The Eastern Court magistrate, who heard earlier that Bokhary suffered from bipolar disorder that she tried to control with alcohol, added: "Unlike other criminals, you're not a bad person but a sick person {hellip} with limited insight into your illness."

The Junior Police Officers Association said it respected the decision, although it would not deter assaults on police. The Police Inspectors Association said the decision was not surprising given evidence about Bokhary's mental condition.

But a retired traffic policeman said on Commercial Radio's phone-in programme last night that the ruling "seems to suggest that some upper-class people can be immune from punishment". Another former police officer called on the government to appeal.

The Department of Justice said it would "consider the reasons for sentence {hellip} and the prosecutor's case report before deciding whether a review of the sentences is appropriate".

Yuen also fined Bokhary HK\$5,000 for failing to provide a breath specimen and HK\$3,000 for careless driving and disqualified her from driving for a year.

The charges arose from an accident on January 27 when Bokhary, driving a car uphill in Stubbs Road, Happy Valley, suddenly veered into the downhill lane and hit a coach head-on. Bokhary, who appeared to have been drinking, slapped the face of a policeman who tried to stop her leaving the scene. She refused a breath test at the scene and again at Happy Valley police station.

In December 2008, Bokhary was ordered to perform 240 hours of community service and fined HK\$1,000 for assaulting a policewoman and a taxi driver. In 2002, she was fined HK\$9,000 for assaulting a policeman and damaging a spotlight outside a bar in Central after an argument with her boyfriend in June 2001.

Bokhary's lawyer, Peter Duncan SC, told the court earlier that she had developed bipolar disorder in 2007 and had resorted to alcohol because her medication was not effective.

Junior Police Officers' Association chairman Wong Ching said: "We totally respect the court's ruling, as it has considered many factors.

"But we have to say that the punishment may be too lenient, that it will fail to deter people from committing the same crime. As police officers, we need respect from members of the public."

Police Inspectors' Association chairman Tony Liu Kit-ming said: "We cannot regard it as an ordinary case. If she was a normal person, of course the sentence would be too lenient. But she has medical proof that she is unwell."

Under her probation, Bokhary is to spend three months at the Betty Ford Centre for alcohol rehabilitation in the US. On her return to Hong Kong, she must attend Alcoholics Anonymous and return to the court for a progress report in four months.

Barister Ronny Tong Ka-wah said he had not heard of an overseas probation order before and questioned how the court could monitor Bokhary's progress there. He also said the sentence was "forgiving".

University of Hong Kong associate law professor Eric Cheung Tat-ming, said the magistrate's reasoning for lenient treatment was convincing and acceptable.

"The judge should not favour or penalise an offender due to her or his background. In this case, for instance, we should not offer her severe punishment because of who she is or who her family members are," Cheung said.

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The case was exceptional because the offender had a psychiatric illness and was under the influence of alcohol, he said.

"The magistrate observed that the best handling of the offender was not imprisonment but to allow her to have her illness cured and I believe it is very convincing," he said.

But Commercial Radio's phone-in was swamped with calls criticising the "light sentencing".

A retired policeman said: "The ruling not only hits police morale, but also encourages the bad guy to follow suit. You are only fined several thousand dollars for slapping an officer and refusing a breath test. To some, it is cheap entertainment."

文章編號: 201008030270389

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三度襲警裁感化 官指病人非壞人 包致金侄女輕判各方嘩然

【明報專訊】已有兩次襲警案底的終審法院常任法官包致金侄女，今年1月逆線行車與旅遊巴相撞後，在電視台鏡頭前失控掌摑男警員，早前第三度被裁定襲警罪成，患有躁狂抑鬱症的被告昨日獲裁判官輕判1年感化。據悉，判刑之輕惹來法律業界嘩然，有立法會議員認為應判監禁；曾因襲警罪被判囚的社運成員更質疑，被告是因身分特殊獲輕判。

前線警：以後唔使執法啦

對於執法警員被當眾掌摑，有資深警務人員坦言感到被侮辱，有前線警員昨晚致電商台節目《左右大局》，狠批「判成咁以後唔使執法啦！」，質疑法官未有盡力保護前線警員安全。

律政司警方：研究判辭

律政司發言人表示，將研究裁判官的判刑理據及主控官報告，才決定是否上訴。警方發言人亦表示要研究判辭。被告9年內三度襲警，昨聞獲判感化令後，如釋重負面露笑容。

家族成員對本港的法、政、經皆具影響力的被告Amina Mariam Bokhary（34歲），早前承認不小心駕駛、襲警及沒有提供酒精呼吸樣本罪名。裁判官阮偉明索閱感化官報告後判刑，辯方資深大律師鄧樂勤稱，雖然感化令條件嚴格，但被告甘願接受。

阮偉明判刑時強調，被告襲警和拒絕「吹波波」測試血液內酒精含量，性質嚴重，「應判處即時監禁，不能向公眾傳達錯誤信息，以為法庭輕視控罪」，但隨即又引述感化報告指被告擁有良好背景，有美滿家庭及教育，大學修讀商業管理以一級榮譽畢業；惟她數年前有精神問題產生惡習，酗酒與使用暴力，「本案與其他同類案件不同，被告本性無暴力傾向，並非壞人，是需要接受幫助的病人，卻對自身病情不甚了解」。

患躁鬱症撞車拒吹波摑男警

阮官接受感化官建議，就襲警罪判被告接受1年感化，首要解決酗酒問題。被告首3個月將在美國加州一治療中心接受住院治療，回港後當局會繼續跟進其酗酒情況，每4個月聽取進度報告；其餘拒絕提供呼氣樣本及不小心駕駛罪，則分別被罰款8000元及停牌1年。

阮官希望被告珍惜大好機會，治療病患並控制情緒與酗酒。被告昨離庭後與一名外籍友人相視而笑，其間獲4名男子護航，張開兩把大傘兼以白布蒙頭，避免遭記者拍下容貌。

被告掌摑男警一幕已盡收攝影機中。今年1月27日，她駕車駛至跑馬地司徒拔道上斜近肇輝台交界，與一輛旅巴相撞。被告渾身酒氣，不理接報到場警方要求，拒絕接受酒精呼氣測試，更情緒大變，打算強行離開，一名男警員上前阻止，遭被告在眾目睽睽下掌摑左臉，他送院後發現左眼視力模糊，左臉及左耳輕微紅腫。

叔父終院法官舅父夏佳理

被告系出名門，叔父包致金和孀孀包鍾倩薇同為法官，分別坐鎮終審法院及高院原訟庭；祖父包大衛和父親包志雄在證券界甚具名望；舅父夏佳理為現任港交所主席及行政會議成員，曾任立法會議員及賽馬會主席。

【案件編號：ESCC1354/10】

文章編號: 201008030040143

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三次襲警仍輕判警界怒吼： 權貴大晒天理何在

【本報訊】終審法院常任法官包致金的姪女Amina Mariam Bokhary三度襲警仍獲輕判，消息震撼警隊，前線人員群情洶湧，質疑「權貴大晒」，批評「天理何在」，希望律政司上訴。有員方代表指，被告當日除了眾目下「兜巴」掌摑男警，被帶署後再涉襲擊女警，他們將向控方了解，案件審訊期間兩項襲警罪減成一項的原因。記者：陳沛敏、蔡元貴

包致金姪女案判決一出，全城譁然，警隊前線人員反應尤其激烈，員方代表收到近年罕見的大量電話和電郵，要求表達員方的不滿，希望尋求公道，「醉酒駕駛都要坐監啦！」、「今次已經係第三次，仲判得咁輕。大家唔信佢有精神病。以前邱德根、楊元龍案有得你睇」。有前線人員表示士氣大受影響，擔心此例一開，日後難以執法。

「我哋老細會唔會出聲」

警隊員佐級協會主席黃程說，尊重法庭判決，但前線普遍認為判決過輕，不足以阻嚇襲警人士。警務督察協會主席廖潔明表示「擔心市民收錯訊息，以為襲警係性質輕微嘅罪行，或者係有錢人同權貴會有例外嘅待遇」。警方發言人昨日只回應：「會研究判詞。」

在非官方的網上警察討論區，有人員以「官字兩個口」為題，留言「今次真係想睇睇律政署（意指律政司）會唔會出手，我哋老細會唔會出聲」。有人員則提醒「夥計」：「別得罪有『背景』的有錢人。法官已開口說『有好的學歷及家庭背景的被告適合接受治療，而不會被判監』。天理何在？」有建議採取實際行動：「大家是不是應該坐下來，聊聊是否需要上街呢？今次事件明顯以法官的個人觀點判刑，如果日後襲警事件引用此例，巡警被打只會無日無之。」

嘲「法庭特許精神狂躁症」

有人以「黑色幽默」回應：「強烈建議警隊高層下令，以後警員如碰上包女，該警員應馬上應用警隊的防身三保，馬上找cover（掩護）……然後再調配警隊的心理醫生到場評估形勢，指示現場警務人員應如何做，才不會激起包女的狂躁病，但不怕一萬，只怕萬一，如行動需要引致警員要接近包女近於六呎距離，則必須戴上鐵甲威龍等裝備，好讓包女可發洩其『法庭特許精神狂躁症』之外，亦可保護警員的根本生存權。」

有當差十多年的交通警昨晚致電商台節目《左右大局》，認為判決將成襲警者求情和減刑的免死金牌，「好簡單，睇私家醫生話自己有狂躁抑鬱就得」。前線人員不忿之餘，可能會有「少做少錯」的負面情緒。有懲教人員質疑，法庭為何不要求小欖精神病治療中心或醫管局的專家評估被告狀況，才作判決。

包致金姪女掌摑警員經過

屢犯同罪：拒酒測大叫“I don't care”

一而再、再而三的案發經過，都離不開醉酒、襲警的行為。被告首次犯案於01年，當時她只有25歲。當年6月24日，她在中環卑利街一間酒吧內，與任職酒吧副經理的男友爭執，用木托盤擲毀射燈，大吵大鬧，毆打警員手臂及背部，最後被裁定刑毀及襲警罪成，罰款9,000元，藏毒罪則罪脫。

警被擲致倒地

至08年7月13日凌晨3時，被告因以信用卡付的士錢被拒，將信用卡擲向司機面部，又踢對方小腿。

接報到場的女警遭被告用手袋「掙面」，糾纏間被告跌在地上，乘勢再踢女警腹部。被告承認襲警及普通襲擊罪，被法庭判社會服務令240小時。

至今年1月27日凌晨12時許，被告駕駛私家車沿跑馬地司徒拔道上山，行至肇輝台交界，被告的私家車失控越線，與一輛旅遊巴士迎頭相撞。

警員到場欲替滿身酒氣的被告進行酒精呼氣測試，被告變得激動，重複大叫“I don't care, I need to leave!（我不在乎，我要離開）”被告欲離開現場，警員鄧文偉上前攔截，被她掌摑左邊面。鄧掩着左面，在數秒後跌在地上，另一警員將被告拘捕。鄧文偉其後被送院，發現左眼視力模糊，左面及左耳有紅腫。本報記者

文章編號: 201008030060219

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第三度襲警 包致金姪女感化 有警員歎有錢大晒 議員指市民覺包庇

曾有兩次襲警前科的終審法院常任法官包致金姪女 Amina Mariam Bokhary，醉駕失事後當場掌摑男警，事件令社會大眾譁然，她早前承認襲警等罪，昨被判接受感化了事。裁判官強調襲警一般須判監，考慮到其背景良好及因患躁狂抑鬱症而犯案才判處感化，並需接受戒酒治療。

有警方前綫人員慨歎「是否有錢大晒」，本身是律師的立法會議員涂謹申認為判刑過輕，市民會感覺事件有包庇。

輕判罰款停牌 被告嘴角帶笑

34歲的被告早前承認不小心駕駛、在意外發生時懷疑駕駛車輛的人沒有提供呼吸樣本及襲警共3罪。

裁判官強調，被告拒絕提供呼吸樣本及襲警的罪行屬嚴重，她有兩次襲警前科，08年曾被判社會服務令，在任何正常情況下均需判監，否則會給公眾錯誤信息，以為這類罪行能獲輕判。

惟裁判官據被告精神科等報告指，她生於富裕家庭，兩年前患躁狂抑鬱症變酗酒，無暴力傾向，故接納判感化令是合適的，其間需在美國及香港接受戒酒輔導，法庭每4個月提取其進度報告，其餘控罪判處罰款及停牌（見表），被告聞判後嘴角帶笑。

律政司覆核否 先研究判詞

警察員佐級協會主席黃程表示，有同事向他反映認為判刑太輕，但他們尊重裁決，亦希望市民不會誤解襲警並非嚴重罪行。

有警員坦言同袍對判刑議論紛紛，質疑司法獨立性，有督察級以上人員更慨歎「是否有錢大晒」。有交通部人員「條氣更不順」，認為被告已第3次襲警，最基本都要判監及緩刑，判感化實太輕：「如果她有錢，去外國住1年才返港，便不會因期間再犯加刑！」

律政司表示須研究判刑理由後，才決定是否提覆核。法律界人士對是次判刑亦持不同意見，議員涂謹申認為，若被告是普通人，客觀而言一個人第3次干犯襲警罪，社會會認為他不尊重法律制度及執法人員，判刑應起阻嚇作用，只判感化是過輕及不能反映公義。

大律師：法理無錯 情理不通

涂續指，由於被告確是包致金的姪女，相信會有市民認為判刑與她的背景有關，甚至覺得事件有包庇。有大律師認為判刑於法理上沒有錯，但在情理上卻說不通，亦擔心判刑會影響業界形象。資深大律師湯家驊表示，一般襲警案的初犯者很大機會也會被判監禁，更遑論是多於一次犯案，酗酒也不能成為犯案的藉口。

辯方早前求情曾指，被告於英國畢業回港後，在工作及生活難尋滿足感而患躁狂抑鬱症，曾經求醫但藥力不足，變成借酒消愁，精神科醫生曾處方戒酒藥，但她自行停服，案發時她認為警員阻其去路才鹵莽犯案。

裁判官：阮偉明；案件編號：ESCC 1354/10。

相關文章：

赴美國戒酒 海外輔導少見

多名示威者 曾襲警判入獄

文章編號: 201008030300108

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Police uproar over light sentence for judge's niece

Police have urged the secretary for justice to review the sentence handed out to a niece of a top judge for assaulting a police officer, amid concerns over its leniency.

The police announcement came as junior officers inundated their association with calls and e-mails expressing disgust over the light sentence handed out to Amina Mariam Bokhary.

Barrister and legislator Ronny Tong Ka-wah - who said it was not unusual for police to make such a request - called for clarification over sentencing standards.

Police Inspectors' Association chairman Liu Kit-ming said yesterday he will send a letter to Deputy Commissioner of Police Lee Ka-chiu this week to report the concerns of frontline police officers.

Bokhary, the 33-year-old niece of Court of Final Appeal judge Kemal Shah Bokhary, was spared a jail term on Monday at Eastern Magistrates' Court, despite being convicted for a third time of assaulting a police officer.

Bokhary was put on probation for a year on the grounds she has a drinking problem brought on by bipolar disorder - or manic depression - and comes from a good family.

A spokeswoman for the Department of Justice said yesterday it is still investigating the rationale of Bokhary's sentence and will decide if a review is needed after the investigation.

Liu said: "Our police officers are highly concerned about the sentence and they worry about the corresponding treatment of similar offenses in the future. The sentence is obviously too light. Assaulting a police officer is a serious crime and this lady had repeatedly attempted the same crime."

He added that the case could give the impression that the rich can receive special treatment in court, and urged the High Court to clarify the sentencing standard so that lower courts could follow it when handling similar cases.

"We are not pointing at Bokhary nor do we hope she can be imprisoned. What we are concerned about most is [there are] guidelines for similar cases."

Lawmaker Tong said the court should clarify the sentencing standard so as to regain public confidence in the judicial system. The light sentence had evoked public anger.

Stephen Hung Wan-shun, chairman of the Hong Kong Law Society's criminal law and procedure committee, said the chance of a review of Bokhary's sentence is low. "Whether the court will review the sentences depends on whether the judgment is manifestly inadequate or wrong in principle."

"I think in this case, Bokhary's sentence of one-year probation, disqualified driving license as well as a fine of HK\$8,000, are not manifestly inadequate, which may imply a lower chance of review."

Bokhary was banned from driving for a year. She had pleaded guilty last month to assault, careless driving and refusing to take a breathalyzer test.

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Sense of injustice: Page 12

文章編號: 201008044480047

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放生包致金姪女全城怒吼

終審法院常任法官包致金的姪女三犯襲警罪行卻仍獲法庭輕判，激發警隊內部及公眾極大回響，有警察工會兩日間接獲近千同袍投訴，而警方昨晚亦決定向律政司提出覆檢今次控罪判刑。除警隊外，各界不滿情緒亦高漲，紛紛質疑今次輕判被告有官官相衛之嫌，最少有三個團體或政黨今日會到律政司辦公室抗議，以向律政司施壓要求覆核判刑。

終審法院常任法官包致金。（資料圖片）

警方發言人昨晚表示，警方已就該宗「毆打警察」控罪的判刑，向律政司提出要求覆檢。消息透露，警方提出覆檢的主要原因，是認為該案的判刑「太過不足夠反映事實」。據悉，律政司已將案件交由刑事檢控專員麥偉德親自處理。律政司發言人稱，正全速及全面考慮此案，將於短期內公布其決定。警察員佐級協會主席黃程則透露，協會兩日來收到來自各區同袍的投訴數以千計，同袍均質疑法庭在該案輕判被告，以及質疑律政司有關襲警的檢控政策。黃程昨在一個場合上與警務處處長鄧竟成等高層見面，已即時反映前線警員對判刑的意見，鄧竟成回應指已知悉情況。

撤襲警罪 律政司應解畫

警務督察協會主席廖潔明亦表示，已收到約五十名同袍電郵或來電，除不滿法庭輕判外，亦指被告原涉及兩項襲警控罪，當中一項涉及被告在警署內再度襲擊一名女警，但此控罪其後卻突然獲撤銷。廖潔明指，被告被捕後在警署再犯案，有明知故犯之嫌，案情屬更嚴重，律政司應解釋撤控原因，該會本周內會去信副處長李家超並要求律政司回應。

網上一個警察非官方討論區內，絕大部分網民認為此案判決過輕，律政司應上訴，有人則揶揄「官字兩個口」、「襲警無錯，如果有錯，因為你窮」等，另有網友擔憂「襲警+拒絕提供樣本都可以感化？警方以後如何執法」，「簡直混帳！庸官；昏官」。

今日最少有三個團體或政黨到律政司辦公室抗議，要求重新審視該案，其中民建聯葵青支部葵青區議員梁偉文指，接獲不少市民反映指判刑不公，「係咪袋住八千蚊就可以擱警察一巴？」勞工基層聯動力及一批自發網友今日亦發起抗議行動。

予人有財勢獲輕判印象

立法會保安事務委員會副主席涂謹申表明會跟進此事，將在立法會復會後要求律政司司長解畫，他質疑律政司將被告較嚴重的襲警罪撤銷，是為輕判被告而「度身訂造」控罪。有議員憂慮個案成「非常負面嘅先例」，令人以為「普遍有錢人有財勢嘅人往往獲輕判」，對法庭失信心。有電台聽眾形容，「（警員）預住套制服畀人冚（擱），香港法治仲存唔存在？」

過往已有兩次襲警前科的包致金姪女Bokhary Amina Mariam，今年一月駕車時與旅遊巴相撞，警員到場調查時她拒絕「吹波波」，更掌摑制止她離開的男警；她早前承認襲警、不小心駕駛及拒絕提供樣本作酒精測試等三罪，前日獲裁判官阮偉明輕判感化及停牌一年以及罰款八千元了事。

文章編號: 201008040320363

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Perception of a double standard

Secretary for Justice Wong Yan-lung moved swiftly yesterday to quell the storm brewing from the lenient sentence meted out to the niece of a top judge - even though it was her third conviction for assaulting a police officer.

But will his decision to initiate a review rather than appeal help clear the air?

Since Amina Mariam Bokhary, 33, was spared jail for careless driving, refusing to take a breathalyzer test, and assaulting a cop, there has been a public outcry.

Why are people angry? Many suspect the leniency shown the woman - the niece of Court of Final Appeal Judge Kemal Mariam Bokhary - had to do with her prominent family background. The belief may be unfounded, but this is the common perception.

It's the public's expectation that justice must be seen or perceived to be served fairly. Unfortunately, magistrate Anthony Yuen Wai-ming wasn't convincing when he placed Amina on probation for one year, fined her HK\$8,000, and banned her from driving for a year.

Yuen referred to her good family background in his judgment, and cited her medical condition of bipolar disorder as the grounds for leniency.

Yesterday, barrister lawmaker Ronny Tong Ka-wah disputed the justice minister's decision not to appeal directly. According to the legislation, either the prosecution or defense in a case, as well as the presiding judge can initiate a review within 14 days after the ruling. It will be presided by the same judge unless he or she recuses himself or herself.

I'm not sure if it's Wong's calculated move to start from a lower ground, and to escalate it later depending on what transpires.

I agree with Tong the minister should mount an appeal to a higher court for a clear verdict and guidelines to deal with similar situations in future. In an appeal, the case will be heard by a different judge, and this would help strengthen public confidence in the SAR's rule of law.

It will go against Hong Kong's interest for anyone to think there's one brand of justice for the rich, and another brand for the rest of us.

In initiating the review, Wong's office called Yuen's ruling inadequate and wrong in principle, but stopped short of saying how the principle had not been thoroughly upheld.

I'm sure this isn't the first time police have asked the Department of Justice to work for a review. But the current case is unique - while the cops are expected to enforce the law, the ruling has cast doubt on how it's expected to be done. No wonder the force's rank and file has reacted strongly to the case.

The reasoning offered by Yuen is unpersuasive. On one hand, he said the offenses were serious and should warrant a custodial sentence. On the other hand, he excused the defendant because of her family background and medical condition.

In any serious offense involving a mental patient, treatment would be mandatory. Has Amina ever been treated for bipolar disorder after her previous convictions?

For anyone with a family background as proud as Amina's, he or she is expected to abide by the law more than anybody else.

文章編號: 201008054480052

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擱警案提覆核 揭沒控襲女警

終審法院法官包致金姪女Amina Mariam Bokhary襲警案餘波未了，雖然律政司已決定就判刑提出覆核，但律政司當初接納Plea bargaining（認罪協商），對被告襲擊女警的另一條控罪不提證供起訴，再惹來立法會議員及警察工會質疑司法不公。

包致金姪女案 被指判刑不足

律政司發言人昨指，律政司經仔細考慮後，鑑於有關判刑，明顯地不足及原則上錯誤，決定按裁判官條例104條提出覆核，覆核聆訊日期有待法庭安排。據了解，一般會交由原審裁判官阮偉明自行覆核。

不過，立法會議員湯家驊質疑，覆核刑期極其量是加重刑罰，但現已不純粹是這案判刑的問題，是公眾覺得法制不公，「有錢人一套，窮人又一套。」湯認為律政司應提出上訴才可令公眾對司法重拾信心，因上訴會就這類案件訂下指引，成為約束性的案例。

湯又強調案件令公眾有太多質疑，例如為何被告襲擊女警可獲不提證供，為何沒被控以醉駕等？

認部分控罪 已反映被告刑責

被告最初被控一項不小心駕駛、一項發生意外後未有提供呼氣樣本，及兩項襲警罪，分別是掌摑男警，及被帶返警署後再襲擊女警余嘉慧，但控方其後就襲擊女警罪不提證供起訴。

律政司昨解釋，辯方律師向控方提建議，如被告承認部分控罪，要求控方就餘下的控罪不提證供。控方認為被告承認首三項控罪已準確反映被告的刑責，控方只會在認為被告所承認的控罪充分及足夠反映其刑責，才接納被告代表律師的建議。但湯質疑被告襲男警和女警是兩回事，是不同地點，不同受害人，只控襲男警控罪，如何已反映再襲女警的嚴重性？

督察協會：再襲女警更嚴重

警務督察協會主席廖潔明亦批評，不提證供做法不恰當，強調被告再襲女警更嚴重，因襲男警可說一時衝動，她被捕後已有一段冷靜期，還再襲女警是更嚴重，但較嚴重的罪行反而沒被控。

熟悉刑事案的律師熊運信估計，辯方律師可以被告精神問題為由，打一名警員和打兩名警員，都是因為精神問題，故承認一項控罪已反映其罪行。

消息人士稱，律政司不提證供起訴的決定曾諮詢警方，對方同意；又解釋選擇覆核而非上訴，是由於前者快捷，後者要在高院排期。

相關文章:

去年逾半襲警者判囚

文章編號: 201008050300109

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擱警案覆核原審裁判官維持原判 包致金姪女又甩身全城高呼上訴

【本報訊】終審法院常任法官包致金姪女 Amina Mariam Bokhary 三犯襲警罪仍獲輕判感化，律政司要求原審裁判官覆核判刑。被公眾質疑因被告特殊家境身份而作輕判的裁判官阮偉明，昨日覆判時強調判刑並非考慮被告的貧富背景，決定維持原判。Amina 又再用身令全城震怒，律政司昨晚決定上訴。記者：蔡曉楓

本案引起社會極大迴響，覆核聆訊吸引大批傳媒採訪，更有近50名市民到東區裁判法院旁聽。一名旁聽女士得悉維持原判大感不滿，「呢個出咗先例，好唔公道囉」。一名自稱「事且男」的男子更在法院外高舉「法律面前窮人平等」的紙牌，他認為本案「彰顯」法律不公。

官指被告因病犯案

被告 Amina Mariam Bokhary 昨以圍巾包裹着頭，由數名壯男保護離開裁判處，在約半百名記者及攝影師包圍下，場面相當混亂。有市民沿途向被告重複大叫「Shame on you!」。有網民在 facebook 的群組對維持原判大表不滿，並要求上訴：「天理何在？公義何在？」

警方昨派員維持秩序，被告登上房車，由警員開路，房車最後衝紅燈離去。辯方律師在庭外替被告向被擱警員及公眾致歉，表示尊重判決，被告會接受感化。

裁判官阮偉明在判詞指出，被告初犯不小心駕駛及拒絕提供呼氣樣本罪，醫生報告指被告因頭部受傷才作出不合作行為，罰款並無不足。至於認為被告三度襲警，應判監禁，但不可忽略的是被告因病犯案，她本性不壞，本案可作例外。至於有人認為法庭純粹以被告富有及身份作判刑，但同一個案若發生在窮家女子身上，她以貧窮為求情理由，社會會否投訴判刑過輕呢，這個問題交由公眾去解答。

阮偉明強調合適的判刑並非依據被告是富是貧，而是考慮其為人，以及給予康復機會。如被告違反感化令，會受到懲處。若是為安撫公眾判處被告入獄，不但損害其自信，令病情惡化，更會摧毀被告的餘生，因此他認為判刑適當，拒絕控方申請，決定維持原判。

覆核聆訊開始時，阮偉明便向律政司代表副刑事檢控專員薛偉成提出，是否須花時間進行覆核程序，何不直接在上訴法庭處理。薛偉成表示律政司將提出新理據指出裁判官判刑不足及原則性犯錯。

薛偉成陳詞時指不小心駕駛罪應提高罰款，因被告當時酒後駕駛釀成交通意外，案情嚴重。而阮偉明多次詢問薛偉成是否要求判處被告即時入獄，薛表示襲警及拒絕提供呼氣樣本更應判處即時監禁，從被告的感化官報告顯示她毫無悔意，不負責任，其家境及情緒病並非求情理由。

律政司已決定上訴

薛偉成續稱，被告曾三度犯下同一罪行，08年判社會服務令，給予機會讓被告康復，她未有珍惜，顯示上次判刑阻嚇性不足。辯方資深大律師鄧樂勳陳詞指出，大眾誤解感化屬輕判，但有誤殺、嚴重傷人的案例會判處感化，因此判刑應視乎案件作獨立考慮。多份醫生報告指被告受鬱躁症影響才犯案，屬特殊情況。

況且辯方早前求情時提出被告的家境富裕，原意是指被告在這種環境下成長，是不會作出案中的舉動，但傳媒誤解為判刑理由，令被告深受傷害，她應與其他人獲平等待遇。律政司昨晚表示，仔細考慮過裁判官駁回控方提出覆核的理據後，決定上訴，向上訴庭申請許可覆核判刑。

被告早前承認不小心駕駛、襲警及拒絕提供呼氣樣本共三項罪，被判接受感化一年、罰款八千元及停牌一年。她於02年因刑毀及襲警被判罰款九千元，08年再因襲警及普通襲擊被判社會服務令240小時。

案件編號：ESCC1354/10

裁判官維持原判的理據

控方陳詞：酒後駕駛釀成意外的不小心駕駛，並拒絕提供呼氣樣本，罪行嚴重，應提高罰款及判處監禁

裁判官回應：被告初犯不小心駕駛及拒絕提供呼氣樣本罪，因頭部受傷才作出不合作行為，罰款並無不足

控方陳詞：法庭不應接納被告的優良家境及患有情緒病作求情理由

裁判官回應：若窮家女子以貧窮為求情理由，社會會否投訴判刑過輕，判刑並非依據被告是富是貧，而是考慮其為人，以及給予康復機會

控方陳詞：被告第三次犯襲警罪，應判處即時監禁

裁判官回應：若為安撫公眾判處被告入獄，會摧毀被告的餘生

資料來源：裁判官判詞

包致金侄女再獲放生 官解畫輕判與家境無關 覆核維持原判 律政司上訴

先後三度襲警獲輕判感化的終審法院常任法官包致金侄女Anima Bokhary，昨獲裁判官阮偉明「再放一馬」，阮官拒絕律政司的覆核刑期申請，3項控罪全部維持原判。律政司表示，考慮裁判官的判決理據後，已決定向上訴庭申請覆核。【相關新聞刊A4】

對於判決惹起公眾強烈不滿，阮偉明昨日罕有澄清，強調並非因被告的家庭背景或財力予以輕判，「上次判刑後，公眾指結果不公正，認為被告富有，且為法官包致金的侄女，法庭優待了有錢人。但我想舉個例，若換上出身寒微的人，父親每日身兼兩職，母當鐘點工人幫補家計，竭盡所能培育小孩。孩子無負期望，勤學用功，考取佳績畢業，卻不幸患上精神問題，情緒波動，無法預估，再三犯事，若他以貧窮求情，法庭會否被指過分同情弱小？這點要留待公眾思考」。

警員組織不滿：未能保障執法

不過，阮偉明的解釋似乎得不到公眾支持，不少到庭旁聽的市民不滿判決，於Amina Bokhary 離庭時更喝倒彩。警務督察協會主席廖潔明表示，相信由同一名裁判官覆核難有不同結果，不會加刑已在預計之內。警察隊員佐級協會主席黃程表示，不少會員不滿判決，認為未能保障警察執法。律政司傍晚表示，仔細考慮過裁判官的理據後，決定按《刑事訴訟程序條例》，向上訴庭覆核判刑。

現年34歲的Amina 三犯襲警不入獄，昨日的聆訊吸引大批傳媒及市民旁聽，坐滿80個記者席及公眾席，法庭要另闢一個法庭，讓公眾聆聽聆訊轉播。

代表律政司的副刑事檢控專員薛偉成表示，適當的刑罰應為即時監禁，他引述感化報告，指被告犯案時第三次襲警，案發後又拒絕接受呼氣測試，兩項有關控罪都應判處監禁，至於被告逆線駕車導致意外，不小心駕駛罪罰款僅3000元，亦不足反映案情嚴重。辯方資深大律師鄧樂勤重申，精神報告力證被告罹患躁鬱症及酗酒，需要治療，不適合監禁。

阮偉明作出裁決時表示，被告患躁鬱症，案發時在眾警包圍下掌摑交通警鄧文偉，「有誰斗膽在此情況出手襲警？這些行徑與她的精神問題病情一致」，「被告如此行事，想挑戰警方？她不是。精神報告印證她是病人，不是壞人。」

官：為釋眾怒判監摧毀一生

阮偉明又強調，判刑焦點不在被告「家境富或貧、本質好與壞」，只望給予被告康復機會。「被告應受懲嗎？當然應該。感化令便是懲刑，若她違反，可以頒令延長命令，甚至改為即時監禁。我可為釋除公眾憤怒而將她判監，但這樣會摧毀被告一生。根據醫生報告，被告一旦入獄，難以接受多項療程，被告的抑鬱問題波動反覆，判監無疑火上加油。」他認為3項罪名的判刑均恰當，最後拒絕律政司的申請。

【案件編號：ESCC1354/10】

法官語錄

裁判官阮偉明：法庭關注的，並不是被告是有錢人還是窮人，法庭只關注他是好人還是壞人，他有沒有機會改過自身，還是會繼續犯案。

文章編號: 201008070040147

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襲警案冰山一角 司法改革保公義

終審法院常任法官包致金姪女，同時也是行會成員夏佳理外甥女的Amina Mariam Bokhary，在有兩次襲警罪前科下，再次襲警兼醉酒駕駛，不用入獄只判感化，引起公眾和警隊譁然，律政司在警隊以及市民壓力下，不得不申請覆檢刑期，但法庭於昨日已決定維持原判。

針對社運人士 引用條例有輕重

其實一開始覆檢刑期除了安撫憤怒的公眾情緒外，實際作用本不大，因為當初警方不知為何，引用《警隊條例》第63條襲擊執行職責警務人員來控告，而這控罪最高刑罰只是罰款5,000元，以及監禁6個月，並非經常引用作檢控示威人士用《侵害人身罪條例》第36條。

而基於大部分案件都甚少判出最高刑期的情況下，覆檢刑期後被告最多只會被監禁若干天，不可能有更重的刑期了。若然當局引用《侵害人身罪條例》第36條來控告，現時就算要覆檢刑期都有較大空間作出較重量刑。

由於現時成文法上，並無規定甚麼情況可以用《侵害人身罪條例》第36條來控告襲警，甚麼情況應改用較輕的《警隊條例》第63條作出檢控。警方經常引用較重的一條，來檢控針對前線警務人員的社運人士，例如曾被控襲警重罪的馮炳德；而這次有人掌摑警員，卻用了條較輕的罪行，公眾不得不相信警方在處理社運人士上有政治打壓之嫌，而在處理今次事件則有出賣前線警員、奉迎有財有勢者之嫌。在香港瀰漫一片仇富情緒下，不踢中大鐵板就怪了。因此，政府有必要就襲警罪作出改革，令法律回復原來維持公義的功能。

統一標準 免檢控政治不正確

簡單而言，日後要引用《侵害人身罪條例》第36條，標準應大為收緊，要做到襲擊導致身體嚴重傷害（Grievous bodily harm，法律界簡稱GBH，《侵害人身罪條例》第19條）標準才可提控，其餘情況一律改為引用《警隊條例》第63條。

事實上，襲擊導致身體嚴重傷害最高刑期為監禁3年，由刑期比照而言，相信《侵害人身罪條例》第36條實際要處理的，是那些對警務人員構成實質傷害的案件，而非社運分子。當成文法有了統一標準，那律政司檢控人員就不用作出政治不正確檢控決定。

但另一方面，除了襲警罪需要作出合理改革外，當局亦應檢討富人在求情上是否獲得較大優勢。包致金姪女獲輕判原因之一，是她有精神科醫生證明患有躁狂抑鬱症，法官認為她「並非要監禁的壞人，而是要治療的病人」。

檢討富人求情 是否更大優勢

一般家庭是否能負擔高昂的私家精神科醫生報告，取得有力證明獲法官接納？包致金姪女案判決翌日，豐德麗副主席唐家榮兒子醉駕兼無牌駕駛獲輕判，法官指他「校內成績優異」，該判決引起不少人憤怒。質疑法院對求情的處理是否已形成漏洞？

此外，針對一些有能力聘用律師甚至資深大律師作代表的案件，律政司刑事檢控科應考慮派出能力相若的檢控官作代表。

包致金姪女襲警案背後查實是香港司法界一連串問題，剛才論及只是當中一小部分。由於仍有很多積弊需要處理，以後類似怪事只會一再重演。香港各界可能需要就司法改革，作出深入而坦誠的討論。

文章編號: 201008070300030

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兩條例涉襲警罪 警研釐清引用標準

【本報訊】（記者 朱樂汶）特區終審法院常任法官包致金侄女襲警案維持原判，不少市民質疑司法公正。不過，有人把矛頭指向警方，稱對方以「較輕控罪」檢控包致金侄女，才是被告獲輕判的原因，質疑警方對襲警者持雙重標準。警務處刑事及保安處處長鄧甘滿強調，警方最初提出檢控時，已全面考慮案情，並不存在討價還價或雙重標準的情況；但他認同現行兩條涉及襲警的法例有進一步釐清的空間，將聯同律政司檢討及釐清兩條法例的引用標準。

包致金侄女Amina Mariam Bokhary被控襲警罪成，惟社會輿論抨擊刑罰過輕，律政司旋即向原審法官申請覆核，惟被裁定維持原判，於是律政司決定向高等法院上訴庭申請覆核。

包侄女控罪 經全面考慮

在昨日一個「烽煙」節目上，有聽眾質疑警務處引用刑罰較輕的《警隊條例》而非刑罰較重的《侵害人身罪條例》起訴Amina。鄧甘滿強調，警方在提出檢控前已充分考慮案情，反映案件的嚴重性，絕對沒有與被告討價還價：「因為她（Amina）認罪，我們就以較輕的罪名起訴，這是不可能的」。

他強調，警方提出檢控時會考慮多項因素，包括案情、犯案者意圖、手法、犯案環境、警員受傷程度等作出決定，而負責檢控的警務人員也將評估法庭的判刑，倘評估刑期將超過6個月，就一定不會引用《警隊條例》提出檢控。

被問及警方是次未諮詢律政司意見就提出起訴，鄧甘滿解釋，該案的案情簡單，未必要諮詢律政司，「倘每宗案都要問律政司是沒有必要，而且警員都接受過訓練，有基本的法律知識」。不過，他承認現行兩條涉及襲警罪行的法例或有含糊不清之處，前線警員研究採用哪條法例時或感困惑，故警方在事件結束後將作出內部檢討及與律政司商討，釐清兩條法例的引用標準。

另外，Amina在灣仔警署襲擊另一名女警，警務處最終卻不提證供起訴，有工會透露該名女警擬循民事途徑向Amina追究。警方表示，暫時沒有收到她的求助個案，但如果符合守則，將協助向公務員事務局反映，又指警務處管理層本周初將與4個警務人員協會開會，了解前線警員所關注的範疇。

文章編號: 201008080050173

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300 march against slapping sentence

About 300 people demonstrated outside the legislature yesterday to protest at the controversial sentence handed down to Amina Bokhary - niece of a top judge - who slapped a policeman after being involved in a late-night smash in her car.

A 12-month probation order for Bokhary, who was also found guilty of careless driving and refusing to take a breathalyzer test, is being taken to the Court of Appeal by the Department of Justice.

That follows a refusal on Saturday by magistrate Anthony Yuen Wai-ming to change his ruling, which spared Bokhary a prison term after a third assault on police.

Her uncle, Justice Kemal Bokhary, sits in the Court of Final Appeal.

Wearing black, the protesters marched from the Legislative Council to Government House to submit a petition to the chief executive. "Black represents the death of Hong Kong's judicial system," said Peter Sun, the protest convener.

He said the rally was against the entire judicial system as the rich appear favored. "We are striving for judicial fairness, and we may escalate the protest if the appeal result is unreasonable."

Also yesterday, the possibility was raised that a woman constable allegedly kicked by Bokhary during her detention may lodge a civil action, though a charge over the incident was dropped as part of a so-called plea bargaining.

Police Inspectors' Association chairman Liu Kit-ming said the officer could apply for a civil action and request an open apology from Bokhary.

In another development, the Liberal Party led about 50 people including retired policemen in a protest march from Wan Chai's Southorn Playground to the Department of Justice.

"We are striving for the dignity of the police and for the proper education of the next generation," said Liberal Party Youth Committee co-chairman Dominic Lee Tsz-king.

Lee also dismissed words from legislator and barrister Audrey Eu Yuet-mee, who said on Saturday protesters could be accused of contempt of court. People have freedom of speech, Lee said, and judges should not be influenced by any protest.

"We look forward to a thorough investigation of the case," said retired police officer Jimmy Chow Chun-yu of the Founders and Veterans of the Junior Police Officers' Association.

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文章編號: 201008094480071

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新聞公報

律政司回應傳媒查詢

就傳媒查詢有關Amina Mariam Bokhary的判刑覆核一案，律政司發言人今日（八月六日）回應如下：

律政司在仔細考慮過裁判官駁回控方提出覆核的理據後，決定按《刑事訴訟程序條例》第81A條向上訴庭申請許可覆核判刑。

完

2010年8月6日（星期五）
香港時間19時46分

Press Releases

Department of Justice responds to media enquiries

In response to media enquiries on the case involving Ms Amina Mariam Bokhary, a spokesman for the Department of Justice (DoJ) said the following today (August 6):

Having carefully considered in detail the reasons of the magistrate for dismissing the prosecution's application for review of sentence, the DoJ will apply to the Court of Appeal for leave to review the sentences pursuant to section 81A of the Criminal Procedure Ordinance, Cap. 221.

Ends/Friday, August 6, 2010

Issued at HKT 19:47

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律政司回應大律師公會和律師會聯合聲明

香港大律師公會及香港律師會今日（八月十一日）發表聯合聲明，以緩和公眾對Amina Bokhary女士一案刑罰的疑慮及協助公眾理解法院在處理此類案件所採取的方法。

律政司發言人在回應傳媒就此聲明的查詢時表示，律政司歡迎兩個法律專業團體就釋除公眾疑慮作出的努力。

我們希望社會人士知道，律政司明白市民對個別案件的判決可能有不同意見，亦非常尊重他們表達意見的自由。然而，律政司呼籲市民尊重和維護香港的司法獨立和法治。

律政司根據既定法律原則審慎考慮過上述案件後，已決定向上訴法庭申請覆核刑罰。由於案件已進入司法程序，律政司不宜進一步評論，但保證會盡速處理。律政司已於星期一（八月九日）去信裁判官要求索取需與申請覆核刑罰一併提交的法庭文件。在收到有關文件後，律政司司長會立即根據《刑事訴訟程序條例》第81A條向上訴法庭申請許可覆核刑罰。如獲得許可，律政司司長即會提出覆核刑罰的申請，並會與司法機構聯絡，以便盡早定出聆訊日期。

完

2010年8月11日（星期三）

香港時間22時03分

Press Releases

DoJ's response to joint statement by Bar Association and Law Society

The Bar Association and the Law Society of Hong Kong issued a joint statement today (August 11) with a view to allaying any misgivings that the general public may have in relation to the recent sentencing of Ms Amina Bokhary and with a view to helping them to understand the Court's approach in a matter of this nature.

In response to media enquiries in respect of this joint statement, a spokesman for the Department of Justice said that the department welcomed the efforts of the two professional bodies to assist the public in these ways.

The department wishes the community to know that it understands members of the public may have different views on the outcome of individual cases, and fully respect their right to freedom of expression. However, it urges the public to respect and protect judicial independence and the rule of law in Hong Kong.

After carefully considering the subject case in accordance with established legal principles, the department has decided to apply for leave from the Court of Appeal to review the sentences. As legal proceedings are pending, it is not appropriate for the department to comment further on the case. But it wishes to assure the community that it is handling the case as promptly as it can. On Monday the 9th of August the department wrote to the magistrate requesting the court papers needed to be filed with the application for leave to review. As soon as those papers are received, the Secretary for Justice will apply for leave to review the sentence under the power granted to him by section 81A of the Criminal Procedure Ordinance. If leave is granted, the Secretary for Justice will then file the application to review the sentence and will liaise with the Judiciary to seek an early hearing date of the application.

Ends/Wednesday, August 11, 2010
Issued at HKT 21:18

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新聞公報

立法會十六題：襲警罪的檢控

以下為保安局局長李少光今日（十月二十七日）在立法會會議上就劉慧卿議員的提問的書面答覆：

問題：

本年八月，Amina Mariam Bokhary女士在一宗襲警案中被判感化12個月，引起一些警員組織及公眾不滿，認為判罰過輕，更有市民發起遊行，投訴司法不公。《警隊條例》（第232章）第63條及《侵害人身罪條例》（第212章）第36（b）條皆涉及襲警行為，但罰則不同。在上述案件中，政府引用罰則較輕的《警隊條例》提出起訴，但對一些涉嫌襲警的示威人士，卻選擇引用罰則較重的《侵害人身罪條例》作起訴，被批評是選擇性檢控。就此，行政機關可否告知本會：

- （一）選擇引用上述兩條法例起訴涉嫌襲警人士的考慮因素分別為何；
- （二）過去三年，分別以《警隊條例》及《侵害人身罪條例》提出起訴的襲警個案數字為何，當中起訴示威人士的個案是否均引用《侵害人身罪條例》；及
- （三）會否考慮修訂法例，就襲警行為訂出統一的罰則？

答覆：

主席：

（一）就涉嫌襲擊警務人員的案件而言，在決定是否和根據哪一項法律條文提出檢控時，警方會考慮涉嫌犯罪行為的實際情況及所搜集到的證據，並在有需要時尋求律政司的意見。如考慮根據《侵害人身罪條例》（第212章）第36（b）條提出檢控，警方會事先尋求法律指引。律政司的檢控律師會按照載於「檢控政策及常規」內的既定原則，就每宗案件的情況獨立地作出檢控決定，務求適當和充分反映被告所牽涉的刑責。

（二）按照有關紀錄，根據《警隊條例》（第232章）第63條而被檢控的人數，在二〇〇八年、二〇〇九年及二〇一〇年一至六月分別為160人、131人及65人。

另一方面，根據《侵害人身罪條例》第36條而作出檢控的數字，在二〇〇八年、二〇〇九年及二〇一〇年一至六月，分別為288人、246人及110人。警方並沒有就第36條下的三個分項逐一備存檢控數字。第36條下的三個分項，即：第36（a）條「意圖犯可逮捕的罪行而襲擊他人」、第36（b）條「襲擊、抗拒或故意阻撓在正當執行職務的任何警務人員或在協助該警務人員的人」及第36（c）條「意圖抗拒或防止自己或其他人由於任何罪行受到合法拘捕或扣留而襲擊他人」。

就涉及示威人士的個案，特別是有關參與遊行或公眾集會時襲警而被檢控的數據，在二〇〇八年、二〇〇九年及二〇一〇年一至六月，根據《警隊條例》第63條而被檢控的有關人士分別為0人、0人及3人；根據《侵害人身罪條例》第36（b）條而被檢控的則分別為1人、4人及0人。

(三) 警方已就有關襲警罪的檢控事宜諮詢律政司，並已按律政司的法律意見在今年八月發出內部指引。指引要求所有前線人員在考慮根據《侵害人身罪條例》第36(b)條提出檢控前，必須先徵詢律政司尋求法律意見。我們相信，該指引可進一步確保執行相關法例的一致性。

我們會繼續留意進展，並與律政司及警務處保持聯繫，密切審視新指引的執行情況及需要改善的地方。

完

2010年10月27日(星期三)
香港時間15時55分

Press Releases

LCQ16: Prosecution of cases involving assault on police officers

Following is a written reply by the Secretary for Security, Mr Ambrose S K Lee, to a question by the Hon Emily Lau in the Legislative Council today (October 27):

Question:

In August this year, Ms Amina Mariam Bokhary was placed on probation for 12 months in a case of assault on police officers, arousing the dissatisfaction of some police organisations and the public that the penalty imposed was too light. Some members of the public even staged processions to complain about miscarriages of justice. Both section 63 of the Police Force Ordinance (PFO) (Cap. 232) and section 36(b) of the Offences against the Person Ordinance (OAPO) (Cap. 212) deal with assaults on police officers, but the penalties are different. While on the aforesaid case the Government instituted prosecution by invoking PFO which imposes a lighter penalty, it chose to institute prosecution against protesters alleged to have assaulted police officers by invoking OAPO which imposes a heavier penalty, hence it was criticised as being selective in instituting prosecutions. In this connection, will the Executive Authorities inform this Council:

(a) of the respective factors of consideration for choosing which of the aforesaid two Ordinances to invoke to prosecute persons alleged to have assaulted police officers;

(b) of the respective numbers of prosecutions instituted by invoking PFO and OAPO in the past three years for assaults on police officers; and among them, whether OAPO was invoked in all the prosecutions against protesters; and

(c) whether consideration will be given to amending the legislation to stipulate standardised penalties for assaults on police officers?

Reply:

President,

(a) For cases involving assaults on police officers, in deciding whether prosecution should be instituted and if so, under which provision, the Police will take into account circumstances of the criminal conduct involved and the evidence collected and where necessary, obtain legal advice from the Department of Justice. The Police will seek legal advice beforehand if they intend to proceed with a charge pursuant to Section 36(b) of the Offences against the Person Ordinance (Cap. 212). Prosecutors of the Department of Justice will make the decision to prosecute in respect of each case independently in accordance with established principles as set out in the "Statement of Prosecution Policy and Practice" so as to appropriately and sufficiently reflect the criminal liability of the defendant.

(b) According to the relevant records, the number of persons prosecuted under Section 63 of the Police Force Ordinance (Cap. 232) in 2008, 2009 and first half of 2010 is 160, 131 and 65 respectively.

On the other hand, the number of persons prosecuted for offences under Section 36 of the Offences against the Person Ordinance in 2008, 2009, and first half of 2010 is 288, 246 and 110 respectively. The Police do not maintain a breakdown of prosecution figures under each of the three sub-sections of

Section 36. The three sub-sections under Section 36 are: Section 36(a) "assaults any person with intent to commit an arrestable offence"; Section 36(b) "assaults, resists, or wilfully obstructs any police officer in the due execution of his duty or any person acting in aid of such officer"; and Section 36 (c) "assaults any person with intent to resist or prevent the lawful apprehension or detainer of himself or of any other person for any offence".

As for cases involving demonstrators, in particular the statistics of prosecutions instituted against participants of public procession or public assembly, the number of relevant persons prosecuted under Section 63 of the Police Force Ordinance in 2008, 2009 and first half of 2010 is 0, 0 and 3 respectively; while the number of persons prosecuted under Section 36(b) of the Offences against the Person Ordinance is 1, 4, and 0 respectively.

(c) The Police have consulted the Department of Justice in relation to the prosecution of cases involving assault on police officers and have issued internal guidelines in August this year based on the recommendations of the legal advice. The guidelines require all frontline officers to seek legal advice beforehand if they intend to proceed with a charge pursuant to Section 36 (b) of the Offences against the Person Ordinance. We believe that these guidelines will further ensure the consistency in enforcing the relevant provisions.

We will continue to keep in view the developments and will keep in contact with the Department of Justice and the Police in order to closely monitor the implementation of the new guidelines and any area that requires improvement.

Ends/Wednesday, October 27, 2010
Issued at HKT 15:54

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