

Department of Justice handles Italian MLA request strictly in accordance with the law

Recent media reports concerning a trial in an Italian court have raised concerns as to whether the handling of the relevant mutual legal assistance (MLA) requests made by the Italian prosecuting authority was delayed or otherwise compromised with a view to enabling the former Chief Executive, Mr Donald Tsang, to obtain an audience with Pope Benedict XVI. As the media reports raise significant questions concerning the rule of law in Hong Kong, the Secretary for Justice takes the view that it is in the public interest to disclose the following findings of the Department of Justice (DoJ) made following an enquiry into the matter:

1. On July 10, 2006, a Letter of Request was issued by the Public Prosecutor of the Court of Milan (Letter of Request) asking for assistance in respect of, among others, the production of bank documents, documentary evidence by way of search and seizure at identified office and residential premises, in respect of criminal proceedings and investigation in Italy concerning various people including Mr Berlusconi.
2. On September 11, 2006, the Letter of Request was received by the DoJ through the Consulate General of Italy in Hong Kong.
3. On January 16, 2007, four search warrants (Search Warrants) were issued by a Magistrate authorising the search of the relevant office and residential premises pursuant to the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525) (MLAO). These Search Warrants were executed on January 18, 2007.
4. The parties concerned, including Ms Paddy Chan Mei Yiu and Ms Katherine Hsu as well as certain companies (Parties Concerned), challenged the validity and the execution of the Search Warrants. On March 22, 2007, the Parties Concerned obtained leave to apply for judicial review of the decisions relating to the issue and execution of the Search Warrants. Since then and (as further explained below) until August 9, 2013, there had been numerous court applications and hearings in respect of the matter and the media in Hong Kong had on occasions made reports on the matter.
5. On October 9, 2007, Mr Duncan Pescod (in his then capacity as the Special Representative for Hong Kong Economic and Trade Affairs to the European Communities) sent an email to Ms Amelia Luk (the then Acting Law Officer (International Law) of the DoJ). In this email, Mr Pescod did not mention anything about any request to meet the Pope. Mr Pescod only informed Ms Luk that Senator Gregorio (then the Chairman of the Italian Senate's Defence Committee and one of his senior contacts in Rome) approached him and made enquiry in respect of the progress concerning the execution of the Letter of Request in Hong Kong. Mr Pescod stated that he had told Senator Gregorio that if a case has been brought to the courts, then it would not be possible for the Government to comment. Mr Pescod asked for advice as to what, if anything, could be said to Senator Gregorio.
6. In an email sent on October 10, 2007, Ms Luk confirmed that the DoJ had received the Letter of Request and informed Mr Pescod that the matter was subject to judicial review proceedings as the Parties Concerned challenged the validity of the Search Warrants and the legality of their execution. Ms Luk concluded by advising Mr Pescod that he tell his contact in Rome that the legal issues arising out of the execution of that part of the mutual legal assistance request by the

Italian Government were before the court in Hong Kong.

7. After various interlocutory applications, the above-mentioned judicial review application was eventually heard during the period from March 22, 2010 to April 29, 2010 before Mr Justice Saunders. On July 30, 2010, the application for judicial review was dismissed. The Parties Concerned lodged an appeal to the Court of Appeal and the appeal was dismissed on May 8, 2012. Their application for leave to appeal to the Court of Final Appeal was dismissed by the Court of Appeal on September 7, 2012. Their further application to appeal to the Court of Final Appeal was dismissed by the Appeal Committee of the Court of Final Appeal on November 19, 2012.

8. On April 15, 2013, the DoJ gave direction to the Hong Kong Police to pass the materials obtained in the course of the execution of the Search Warrants to the Italian prosecution authority. Upon being informed of this decision of the DoJ, the Parties Concerned filed a fresh application for leave to apply for judicial review on April 25, 2013 seeking to challenge the DoJ's decision to pass the materials to Italy.

9. This fresh set of judicial review application was heard by Mr Justice G Lam on May 31, 2013 and was dismissed on June 5, 2013. The Parties Concerned lodged an appeal to the Court of Appeal, which was heard on July 5, 2013 and was dismissed on July 9, 2013. Their application for leave to appeal to the Court of Final Appeal was dismissed by the Court of Appeal on the same day (9 July 2013), and their further application for leave to appeal to the Court of Final Appeal was dismissed by the Appeal Committee of the Court of Final Appeal on August 9, 2013.

10. Following the conclusion of all the legal proceedings in Hong Kong, the relevant materials seized under the Search Warrants were sent to Italy on August 12, 2013.

A spokesman for the DoJ said today (October 3) that from the time the DoJ received the Letter of Request up to the time delivery of the materials seized under the Search Warrants were delivered to Italy, the DoJ had acted strictly in accordance with the laws of Hong Kong including the MLAO. The entire process in respect of the handling of the Letter of Request has never been compromised in any way, nor have any irrelevant considerations been taken into account.

Throughout this period from September 11, 2006 to August 12, 2013, the only communication between the DoJ and Mr Pescod was the email exchange on October 9 and 10, 2007 referred to in paragraphs 5 and 6 above. Other than the said email exchange, there was no communication between Mr Pescod and any person within the DoJ (including Ms Luk and the then Secretary for Justice, Mr Wong Yan Lung) in respect of the execution of the Letter of Request. As confirmed by Mr Wong Yan Lung, he has had no discussion or any other form of communication with Mr Pescod over the handling of this matter. Besides, Mr Wong Yan Lung was not copied the email exchange mentioned in paragraphs 5 and 6 above. Accordingly, when handling the execution of the Letter of Request, the DoJ has not taken into account any attempt to arrange a meeting with the Pope.

Ends/Thursday, October 3, 2013
Issued at HKT 17:46

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