Administration of Justice and Legal Services

Research Office
Legislative Council Secretariat

Statistical Highlights

ISSH05/2024

Judicial review in Hong Kong

Figure 1 – Number of applications for leave for JR

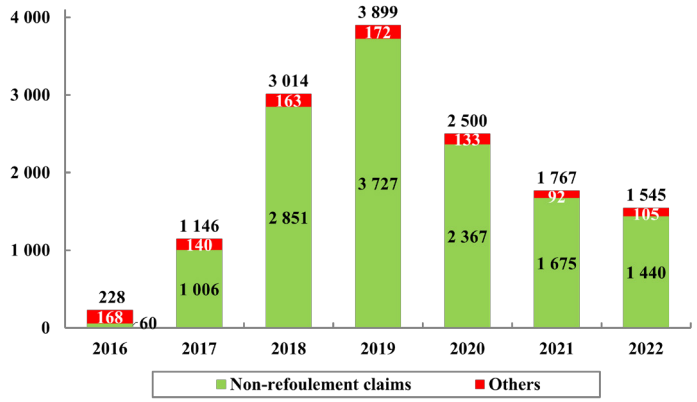
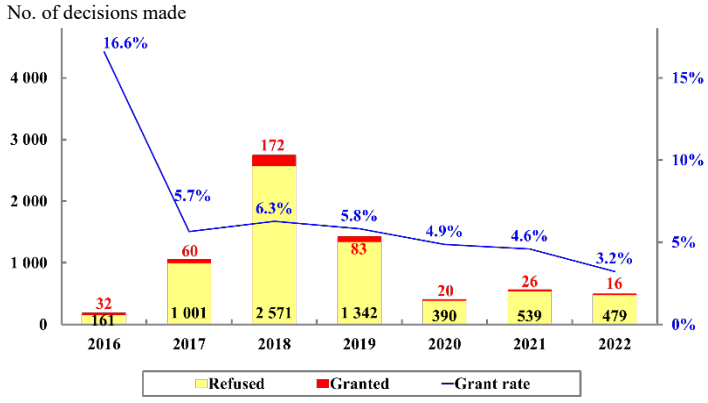
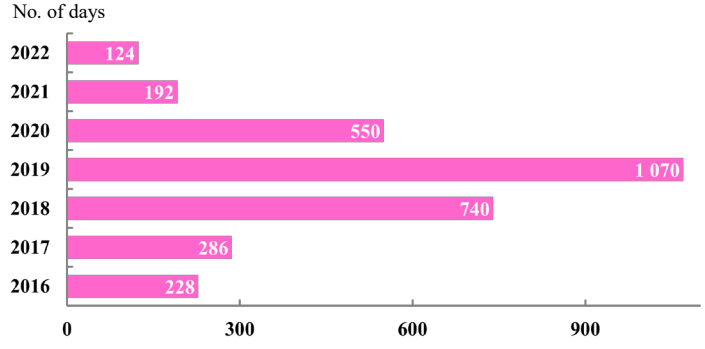


Figure 2 – Outcome of JR leave applications and the grant rate(1)



Note: (1) Figures refer to court decisions made during the year, excluding withdrawn cases or pending decisions.

Figure 3 – Average processing time of JR leave applications(1)



Note: (1) Excluding withdrawn cases.

Highlights

- Judicial review ("JR") is the review by the court to determine whether a decision of public authorities or a piece of legislation is lawful and valid. While the legal right of JR is provided in Article 35 of the Basic Law, residents must obtain permission (i.e. leave) from the court beforehand. In 2019, the number of such applications rose to a peak of 3 899 cases, mostly due to the upsurge in non-refoulement claims ("claims", meaning claims for the right to stay in Hong Kong due to inhuman treatment in home countries) filed by foreigners (**Figure 1**). Such claims accounted for a lion share of 96% of overall applications in 2019.

- Yet overall applications receded by 60% in the next three years to 1 545 cases in 2022, upon a 61% plunge of those applications related to claims after adoption of a "multi-pronged strategy" by the Government. Netting out these claims, other JR leave applications also fell after 2019, by 39% to 105 cases in 2022.

- Between 2016 and 2022, the share of JR leave applications approved by the court fell steadily, from 16.6% to 3.2% (**Figure 2**). In deliberation of JR leave applications, the court considers key factors like whether the applicants have (a) sufficient interest in the matter; (b) "reasonably arguable cases" with realistic prospect of success; and (c) exhausted all appeal procedures. By and large, claims-related applications have a weaker case, as only 1.2% of overall claims over the past 15 years were substantiated, according to the Immigration Department.

- It used to take as long as 1 070 days on average for the court to make decisions upon receipt of JR leave applications in 2019 (**Figure 3**). However, the average processing time was substantially shortened to just 124 days in 2022, after the Judiciary adopted proactive measures to expedite handling of claim-related cases such as streamlining court proceedings and deployment of dedicated temporary judicial manpower.

Figure 4 – Court rulings on those JR involving the Government

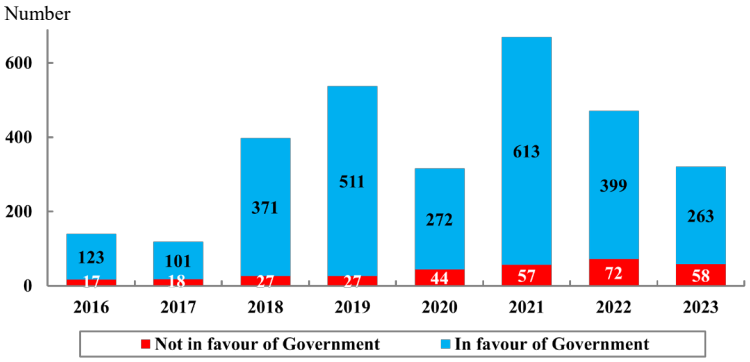


Figure 5 – Legal aid applications for JR by type

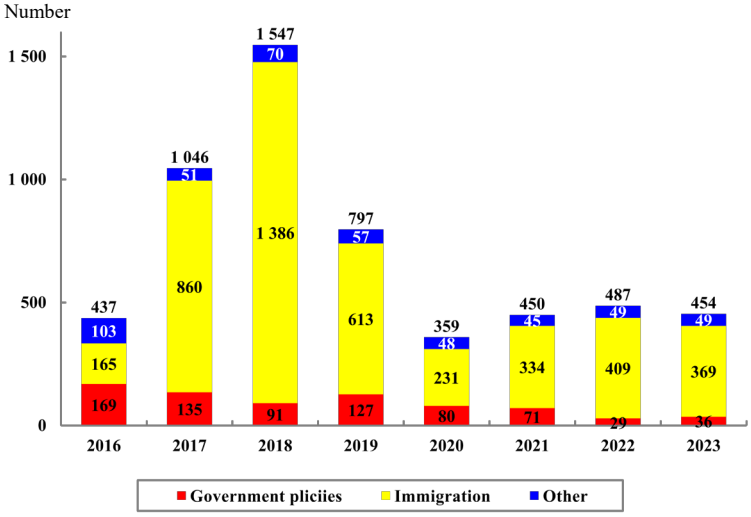
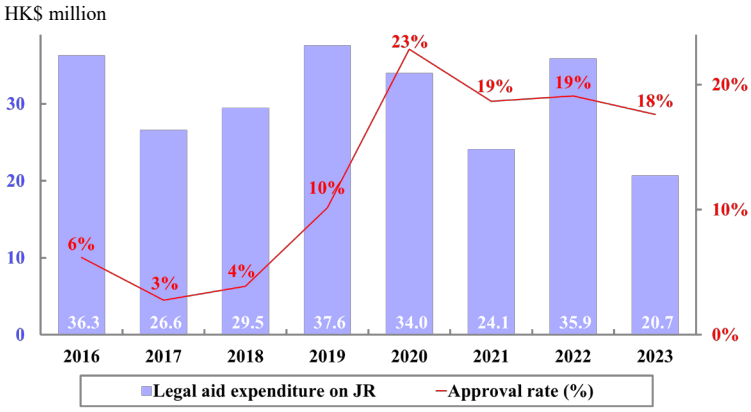


Figure 6 – Approval rate of legal aid applications for JR[(1)] and related expenditure[(2)]



Notes: (1) Applications and approvals for legal aid for JR may not take place in the same year.

(2) Expenditure on JR cases is based on financial year ending March. Provisional figure for 2023.

Highlights

- Once JR applications obtain the leave, they can proceed to full hearings in the court. Court judgment on JR is based on three main grounds, namely (a) illegality, (b) irrationality and (c) procedural impropriety of the decision or action of the public authorities. For those JR cases heard in the Court of Final Appeal or the High Court, the annual share of rulings in favour of the Government all exceeded 80% between 2016 and 2023, with an average rate of 88% (**Figure 4**).

- The public is concerned how far JR applicants seek legal aid as a financial support. After reaching a peak of 1 547 cases in 2018, the number of legal aid applications for JR receded by 71% to 454 cases in 2023 (**Figure 5**). This was mainly attributable to the steep decline in those applications over immigration matters (including non-refoulement claims). Yet immigration still took up a lion share of 81% in legal aid applications for JR in 2023, way above government policies (11%) and others (7%).

- The approval rate for legal aid applications for JR rebounded from a low of 3% in 2017 to 18% - 23% over the past four years, along with the aforementioned fall in immigration-related caseload which generally has a weaker case in terms of "merit test" (**Figure 6**). As regards annual legal aid expenditure for JR borne by the Government, it fell from HK$36.3 million in 2016 to HK$20.7 million in 2023.

Data sources: Latest figures from Department of Justice, Immigration Department and Legal Aid Department.

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