

LCQ6: Eligibility for candidacy of persons who have chanted certain slogan to run for Legislative Council election

Following is a question by the Hon Claudia Mo and a reply by the Secretary for Constitutional and Mainland Affairs, Mr Patrick Nip, in the Legislative Council today (May 16):

Question:

It has been reported that late last month, a former Director of the Hong Kong and Macao Affairs Office of the State Council was asked by the media on whether people who had chanted "end the one-party dictatorship" slogan in the Hong Kong Special Administrative Region (HKSAR) might run for the Legislative Council (LegCo) election. He replied that "it should be the case that they may not, as such an act contravenes the Country's Constitution and is an unlawful act". In this connection, will the Government inform this Council:

(1) if it knows whether there is any legal basis for the statement that chanting the "end the one-party dictatorship" slogan in HKSAR is an unconstitutional and unlawful act; if there is, of the details;

(2) whether a Returning Officer (RO), when determining the validity or otherwise of a nomination of a candidate for the LegCo election in future, will be required to consider if that person has previously done the following acts: having chanted the "end the one-party dictatorship" slogan, having joined an organisation whose political platform consists of such a slogan, and having participated in activities organised by this type of organisations; whether an RO may decide that the nomination of a candidate is invalid on the ground that the candidate has previously done these acts; and

(3) whether there are other provisions in the Constitution, apart from Article 31 of the Constitution under which HKSAR was established, that are applicable to HKSAR; if so, of such provisions and the legal basis for their being applicable to HKSAR, as well as the legal consequences to be borne by those Hong Kong people who have contravened such provisions?

Reply:

President:

Having consulted the Department of Justice, our consolidated reply to Hon Claudia Mo's question is as follows:

According to the Preamble of the Constitution of the People's Republic of China (Constitution), "[t]he Constitution, in legal form, affirms the achievements of the struggles of the Chinese people of all nationalities and

defines the basic system and basic tasks of the State; it is the fundamental law of the State and has supreme legal authority. The people of all nationalities, all State organs, the armed forces, all political parties and public organizations and all enterprises and institutions in the country must take the Constitution as the basic standard of conduct, and they have the duty to uphold the dignity of the Constitution and ensure its implementation." (Note)

Article 31 of the Constitution provides that "[t]he State may establish special administrative regions when necessary. The systems to be instituted in special administrative regions shall be prescribed by law enacted by the National People's Congress (NPC) in the light of specific conditions". Article 62 of the Constitution prescribes the functions and powers that may be exercised by the NPC, including, as provided by subparagraph (14), "to decide on the establishment of special administrative regions and the systems to be instituted there". In accordance with the Constitution, the NPC enacted the Basic Law of the Hong Kong Special Administrative Region (HKSAR) of the People's Republic of China (Basic Law), prescribing the systems to be practised in the HKSAR, in order to ensure the implementation of the basic policies of the People's Republic of China regarding Hong Kong, namely, "one country, two systems", "Hong Kong people administering Hong Kong" and a high degree of autonomy.

At the Celebrations of the 20th Anniversary of Hong Kong's Return to the Motherland and the Inaugural Ceremony of the Fifth Term Government of the HKSAR on July 1 last year, President Xi Jinping clearly stated that "[t]he Basic Law is a basic legislation enacted in accordance with the Constitution. It stipulates the systems and policies practised in the HKSAR, codifies into law and makes institutional arrangement for the principle of 'one country, two systems', and provides legal safeguards for the practice of 'one country, two systems' in the HKSAR." Article 11(1) of the Basic Law stipulates that, in accordance with Article 31 of the Constitution, the systems and policies practised in the HKSAR, including the social and economic systems, the system for safeguarding the fundamental rights and freedoms of its residents, the executive, legislative and judicial systems, and the relevant policies, shall be based on the provisions of the Basic Law.

As Article 31 of the Constitution already authorises the NPC to prescribe the systems to be instituted in special administrative regions by law, in accordance with Article 31 of the Constitution, the systems and policies of the HKSAR that were prescribed in the Basic Law and enacted by the NPC shall have an overriding status. Therefore, the provisions on the socialist system and policies in the Constitution are not implemented in the HKSAR.

The Constitution and the Basic Law form the constitutional basis of the HKSAR. Under this constitutional framework, we must be well aware that the political party system of the People's Republic of China is a system of multi-party co-operation and political consultation led by the Communist Party of China. The HKSAR is an inalienable part of the People's Republic of China. We must respect the Constitution. While the HKSAR implements "one country, two systems" in accordance with the provisions in the Basic Law, the

HKSAR must also respect the system in the Mainland.

As regards the parts relating to the Legislative Council election in the question, the Legislative Council Ordinance (Cap 542) clearly stipulates that a person intending to run in a Legislative Council election must make a declaration to the effect that he/she will uphold the Basic Law and pledge allegiance to the HKSAR. In accordance with the Legislative Council Ordinance and Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (Cap 541D), the Returning Officers must, based on the specific circumstances of each case, decide whether or not a person intending to run in the election is validly nominated as a candidate.

We will continue to perform the relevant duties in accordance with the law and ensure that elections are conducted in a fair, open and honest manner.

Thank you Mr President.

Note: This English translation of the Preamble of the Constitution of the People's Republic of China is a direct quote from the official website of the National People's Congress of the People's Republic of China (www.npc.gov.cn/englishnpc/Constitution/2007-11/15/content_1372962.htm).

[Transcript of remarks by CS at media session \(with video\)](#)

Following is the transcript of remarks by the Chief Secretary for Administration, Mr Matthew Cheung Kin-chung, at a media session today (May 16) before LegCo meeting:

Reporter: Could you tell us why was the journalist arrested and how will the Government follow up on this incident, and how would you comment on the police officers' handling of the incident?

Chief Secretary for Administration: We have immediately contacted the Hong Kong SAR Beijing Office this morning following this news report. Our colleague in Beijing has also been in touch with the Hong Kong and Macao Affairs Office of the State Council. Our instruction to our Beijing colleagues is that we should do whatever we can to assist the reporters concerned and to look into the matter, and also solicit the help of the relevant departments concerned to sort out the matter as quickly as possible. I gather that the Hong Kong and Macao Affairs Office of the State Council has already been involved in mediating the case and in trying to establish the facts. So, we need some time to establish the facts first, okay? But we are very concerned about the safety of our reporters actually carrying out their duties anytime, anywhere, okay? Thank you.

(Please also refer to the Chinese portion of the transcript.)

LCQ9: Control measures on food imported from Japan

Following is a question by the Hon Tommy Cheung and a written reply by the Secretary for Food and Health, Professor Sophia Chan, in the Legislative Council today (May 16):

Question:

Following the incident of leakage of radioactive matters from the Fukushima nuclear power plant in Japan which happened on March 11, 2011 (the Fukushima incident), the Government issued an order under section 78B of the Public Health and Municipal Services Ordinance (Cap 132) to prohibit the import of all vegetables, fruits, milk, milk beverages and milk powder (Category A food items) from five prefectures of Japan (namely, Fukushima, Ibaraki, Tochigi, Chiba and Gunma), as well as to require that the import of all chilled or frozen game, meat and poultry, all poultry eggs and all live, chilled or frozen aquatic products (Category B food items) from these five prefectures must be accompanied by a certificate issued by the competent authority of Japan certifying that the radiation levels of such food items do not exceed the guideline levels. The order took effect on March 24, 2011 and is still in force. The Government has indicated that it has all along been maintaining communication with the authorities of Japan and reviewing such import control measures in the light of the latest situation. In this connection, will the Government inform this Council:

(1) of the number of samples of imported Japanese food tested on their radiation levels by the Centre for Food Safety (CFS) since the occurrence of the Fukushima incident, and the respective numbers and percentages of samples the test results of which were satisfactory and unsatisfactory;

(2) whether CFS has fully grasped the outcome of the tests conducted by the authorities of Japan and other economies on the radiation levels of Categories A and B food items exported from the five aforesaid prefectures; if so, of the respective latest test results, including whether the radiation levels of these two categories of food items have met the standards for safe consumption; and

(3) of the factors that CFS takes into consideration in its review of the aforesaid import control measures, and the circumstances under which such measures will be relaxed or revoked?

Reply:

President,

Following the Fukushima nuclear power plant incident in Japan on March 11, 2011, the Centre for Food Safety (CFS) of the Food and Environmental Hygiene Department (FEHD) immediately stepped up the surveillance of the radiation levels of food imported from Japan to safeguard food safety. On March 23, 2011, CFS detected that the radiation levels of three samples from the vegetables imported from Chiba prefecture on that day had exceeded the guideline levels adopted by the Codex Alimentarius Commission (Codex guideline levels). On March 24, 2011, the Director of Food and Environmental Hygiene issued an order under section 78B of the Public Health and Municipal Services Ordinance (Cap 132) (the Order) to safeguard food safety and public health.

The Order prohibits the import of all vegetables, fruits, milk, milk beverages and milk powder from the five affected prefectures, namely Fukushima, Ibaraki, Tochigi, Chiba and Gunma. The import of all chilled or frozen game, meat and poultry, poultry eggs and all live, chilled or frozen aquatic products from the above prefectures is prohibited, unless the food products are accompanied by a certificate issued by the competent authority of Japan certifying that their radiation levels do not exceed the Codex guideline levels. The Order is still in force.

The CFS has been conducting tests on the radiation levels for every consignment of food products imported from Japan (not limited to those imported from the five prefectures) ever since the Order has come into effect, to ensure food safety. The CFS updates the latest figures and the test results on food imported from Japan on its website every working day for public inspection.

My reply to the three parts of the question is as follows:

(1) From March 24, 2011 to May 8, 2018, the CFS tested more than 490 000 samples of food imported from Japan. The test results showed that none of the samples had radiation levels exceeded the Codex guideline levels.

(2) Since April 1, 2012, the Japanese authorities have set more stringent levels for radiocaesium (Caesium-134 and Caesium-137) than the Codex guideline levels. Details are as follows:

Food category	Japanese levels	Codex guideline levels
General food products	100 Bq/kg	1 000 Bq/kg
Milk	50 Bq/kg	
Food products for infants and young children		

Information from the Ministry of Health, Labour and Welfare of Japan

indicated that, as at early March 2018, over two million food samples were collected in Japan for radiation testing. The radiation levels of a great majority of these samples were below the Japanese levels, which are more stringent than the Codex guideline levels. When samples are found to have radiation levels exceeding the Japanese levels and the Codex guideline levels, the Japanese authorities will prohibit the domestic sale and export of the food concerned.

According to the information available, over the past three years, the European Union, the United States, Canada, Singapore, Australia and New Zealand had not announced any cases of Japanese food samples, including vegetables, fruits and milk from the aforementioned five prefectures, found to have exceeded the prescribed radiation levels.

(3) Ensuring food safety is the Government's prime consideration. The Food and Health Bureau and the CFS have been maintaining communication with the Japanese authorities and reviewing the control measures on food imported from Japan in the light of the latest situation. The factors taken into account include assessments made by international agencies, food surveillance results of the Japanese authorities, the latest control measures taken by other economies on food from Japan, local food surveillance results, consistency of the control measures with the World Trade Organization's requirements and public concern.

LCQ18: Customs and Excise Department proactively combats various smuggling activities

Following is a question by the Hon Jimmy Ng and a written reply by the Secretary for Security, Mr John Lee, in the Legislative Council today (May 16):

Question:

According to the information of the Security Bureau, there has been an upward trend in smuggling activities by air in recent years. The number of such cases detected by the Customs and Excise Department increased from 4 141 in 2013 to 7 786 in 2017, representing a cumulative increase of nearly 90 per cent; and among them, the trend of increase was more apparent for cases of smuggling by means of air postal packets and express cargoes (with a rate of increase being 264 per cent), and the percentage of which in the total number of air smuggling cases also increased from 12 per cent in 2013 to 23 per cent in 2017. In this connection, will the Government inform this Council:

(1) of the number of each type of air smuggling cases detected (including

cases of bringing undeclared dutiable goods into Hong Kong as well as import or export of prohibited/controlled articles without the licences/certificates required by the law) in each of the past five years (i.e. from 2013 to 2017); and among the people engaged in such smuggling activities, of the respective percentages of individual travellers and members of organised crime syndicates;

(2) given that the rapid development of e-commerce in recent years has made it increasingly convenient and inexpensive for smugglers to transport illicit articles by means of air postal packets and express cargoes, of the targeted measures, on the premise of striking a balance between facilitating e-commerce and curbing smuggling activities, to be adopted by the authorities for eradicating such smuggling activities; whether the authorities have plans to deploy additional cargo examination staff and detector dogs to various air cargo terminals and the Air Mail Centre; if so, of the numbers; if not, the reasons for that; and

(3) given that the number of cases involving the use of air postal packets and express cargoes to smuggle drugs in 2017 increased by almost 40 per cent compared with that in 2016, and that there is an array of tactics used by drug traffickers to commit crimes and conceal drugs, of the mechanism or procedure to be adopted by the authorities for detecting drugs in air postal packets and express cargoes, as well as the advanced examination equipment or chemical processes that will be employed for this purpose?

Reply:

President,

The Customs and Excise Department (C&ED) is the primary agency responsible for the suppression of smuggling activities in Hong Kong. Smuggling refers to the illegal movement of goods and articles into and out of Hong Kong. Common smuggling activities include bringing undeclared dutiable goods (e.g. cigarettes) into Hong Kong, as well as import and export of prohibited/controlled articles (e.g. dangerous drugs, infringing goods, endangered species, firearms, ammunition and weapons, etc.) without licences/certificates required by the law. The enforcement powers for customs officers are vested in various ordinances, mainly the Customs and Excise Service Ordinance (Cap 342) and the Import and Export Ordinance (Cap 60). The maximum penalty for conviction on indictment of the most serious smuggling offence is life imprisonment and an unlimited fine.

C&ED has all along been combating various smuggling activities proactively, and the overall smuggling situation in Hong Kong has been under effective control. C&ED noticed that in recent years, smugglers are transporting illicit articles through air postal packets and express cargoes, which are increasingly convenient and much lower in cost. Against this trend, C&ED has devised pragmatic and holistic strategies to intercept illicit articles, in an efficient way, from being transported to and from Hong Kong.

My reply to the various parts of the question is as follows:

(1) In the past five years, the number of air smuggling cases (including through cargoes, postal packets and travellers) detected by C&ED surged from 4 141 cases in 2013 to 7 786 cases in 2017, involving dutiable goods, dangerous drugs, infringing goods, endangered species as well as firearms, ammunition and weapons (see details at Annex). C&ED does not have statistics on the respective percentages of individual travellers and members of organised crime syndicates among the people engaged in such smuggling activities.

(2) C&ED adopts an intelligence-driven and risk management approach to guard against and combat criminal activities. Apart from taking stringent enforcement actions at the airport and various boundary control points, the Syndicate Crimes Investigation Bureau was set up in 2013 to combat organised crime syndicates by conducting in-depth investigation into the syndicated mode of smuggling operation and employing financial investigation skills to trace criminal proceeds and funding sources. In light of the exponential growth in the volume of air postal packets and express cargoes, C&ED has implemented multi-pronged strategies and measures to cope with this challenge.

On deployment of manpower resources, customs officers station at all air cargo terminals and Air Mail Centre (AMC) round the clock. In combating smuggling activities using air postal packets and express cargoes, C&ED steps up the enforcement through flexible manpower deployment and with the assistance of canine units to detect narcotics. C&ED has planned to create additional new posts to enhance law enforcement capability on customs clearance of air cargoes and postal articles.

On collaboration with the industry, C&ED has been working closely with express couriers to facilitate its law enforcement. In 2015, C&ED signed a Memorandum of Understanding with major express courier operators to address the ever-increasing smuggling activities. Meanwhile, C&ED shares with frontline courier staff the latest smuggling trend through regular outreach programmes. C&ED has also taken the initiative in co-operating with the Hongkong Post to enhance examination of high-risk air postal packets at AMC and other mail processing centres.

On intelligence gathering, C&ED has enhanced networking with Mainland and overseas law enforcement agencies through frequent and timely intelligence exchanges and mounting of joint operations. In addition, C&ED is proactively developing the Customs and Excise Information and Risk Management System (CEIRMS). CEIRMS will provide a centralised repository to facilitate quick entity matching and analysis of information as well as automatically capture the latest findings of an entity being searched, making C&ED's risk profiling work more efficient. CEIRMS will be implemented in June 2018.

On publicity and education, C&ED has been actively disseminating anti-smuggling messages to the public through leaflets, press conferences, press interviews with officers and other means. C&ED also launches various initiatives to educate youngsters, such as the Youth Ambassador Against Internet Piracy Scheme, and joins hands with the Education Bureau to enhance the youth's self-discipline and civic responsibility to stay away from

illicit activities.

(3) To enhance detection capability, C&ED has been actively using advance technology in customs clearance. Keeping abreast of the technological development in x-ray scanners and trace detectors, C&ED is endeavoured to source the most updated equipment for deployment by frontline staff, including the ion scanner and Raman spectroscopy for detection of narcotics and explosives, as well as other specialised equipment such as the fibrescope, density meter, radiation detector, etc.

Besides, C&ED is working towards enhancing the degree of automation in postal clearance, so that selected air postal packets can be automatically and more quickly conveyed to the customs examination hall for x-ray scanning and further inspection if required. This will facilitate elimination of labour-intensive processes, enabling frontline staff to focus on risk profiling and examination of selected packets.

HK SAR Government concerned about HK TV station cameraman being taken away by police in Beijing

On an incident relating to a Hong Kong television station cameraman being handcuffed and taken into a police vehicle in Beijing, a spokesman for the Hong Kong Special Administrative Region (HK SAR) Government said today (May 16) that the Government is very concerned about the incident. The Office of the Government of the HK SAR of the People's Republic of China in Beijing (Beijing Office) has immediately contacted the Hong Kong and Macao Affairs Office of the State Council (HKMAO) to express concern, and notes that the HKMAO is seeking information and following up on the incident with relevant departments.

The spokesman said the Beijing Office would render all possible assistance to the media involved in the incident.