

LCQ17: Law enforcement by police officers

Following is a question by the Hon Charles Mok and a written reply by the Secretary for Security, Mr John Lee, in the Legislative Council today (October 23):

Question:

Article 28 of the Basic Law provides that the freedom of the person of Hong Kong residents shall be inviolable, which includes the prohibition of arbitrary or unlawful search of the body of any resident or deprivation or restriction of the freedom of the person. However, it has been reported that on the night of June 11 this year, police officers conducted stop-and-searches on a large number of members of the public in the vicinity of Admiralty (including inside the MTR station and on the streets near the Legislative Council Complex), without telling such members of the public the offences which they were suspected of having committed or of being about to commit or of intending to commit, as well as the relevant justifications. Some members of the legal sector have pointed out that under the common law system, police officers, when conducting stop-and-searches on members of the public, must not merely claim to have reasonable suspicion, but instead must explain the substantive grounds for the necessity of the stop-and-search. A judgment handed down by the court has pointed out that the reasonableness of any suspicion that a police officer has against a person must be determined by reference to the objective facts at the material time and must be supported by relevant evidence. Moreover, the code of practice for police officers in the United Kingdom provides that reasonable suspicion can never be supported on the basis of a person's physical characteristics (e.g. age), but instead must be on the basis of the intelligence about and description of the suspected person which the police officer has obtained. On the other hand, in the course of covering news in the vicinity of Admiralty from June 10 to 12, some reporters were stopped and searched as well as rudely driven away by police officers, resulting in their news covering work being hindered. Regarding the law enforcement by police officers, will the Government inform this Council:

- (1) of the number of members of the public who were stopped and searched by police officers in Admiralty on the night of June 11, and the justifications for such acts;
- (2) of the offences that such members of the public were suspected of having committed or of being about to commit or of intending to commit, on the basis of which the police officers had conducted the stop-and-searches on them, as well as the objective criteria and relevant evidence giving rise to the police officers' suspicion and substantiating the reasonableness of their suspicion;
- (3) of the number of reporters who were stopped and searched by police

officers from June 10 to 12, and the offences, which provided the basis for such acts, that they were suspected of having committed or of being about to commit or of intending to commit; the measures put in place to ensure that police officers, when performing duties, will not pose threats to the personal safety of reporters discharging duties of covering news; and

(4) whether it has assessed if the police officers in the aforesaid operations, by conducting stop-and-searches without providing any evidence to substantiate the reasonableness of their suspicion, contravened Article 28 of the Basic Law and acted beyond the power vested in police officers to stop, detain and search a person under section 54(2) of the Police Force Ordinance (Cap 232)?

Reply:

President,

The Police have a statutory duty to maintain public safety and public order. Section 54 of the Police Force Ordinance (Cap 232) provides that if a police officer finds any person in any street or other public place acts in a suspicious manner, or whom he reasonably suspects of having committed or of being about to commit or of intending to commit any offence, he is empowered to stop the person for demanding him to produce proof of identity for inspection.

Police officers may also, by virtue of the power vested under section 17C of the Immigration Ordinance (Cap 115), demand members of the public to produce proof of identity for inspection. Under individual legislation such as the Public Order Ordinance (Cap 245), the Dangerous Drugs Ordinance (Cap 134), the Weapons Ordinance (Cap 217) and the Firearms and Ammunition Ordinance (Cap 238), police officers are authorised to conduct stop-and-search. By means of the stop-and-search actions, the Police can discharge their statutory functions more effectively, particularly in the prevention and detection of crimes and offences, as well as in the prevention of damage to life and property. Police will always ensure that the stop-and-search actions are entirely lawful, necessary and appropriate.

Our reply to Hon Mok's question is as follows:

(1) to (3) Reasonable suspicion means sensible or logical suspicion after assessment by normal persons under normal circumstances. Generally speaking, police officers will, during patrols or operations, observe how people act, what they wear, their personal belongings and their behaviour. Taking into account the observation made, the prevailing situation and circumstances at the scene and a comprehensive consideration of factors such as the understanding of the district concerned, its crime trends and the intelligence gathered, police officers will make an assessment to identify suspicious persons or those arousing reasonable suspicion (that they have committed, are about to commit or intend to commit any offence). Police officers will then conduct stop-and-search actions at an appropriate juncture for effective prevention and detection of crimes.

In the night on June 11, a large-scale public assembly held in Admiralty and its vicinity drew a large crowd. On the day before (i.e. in the small hours of June 10), the Police seized dangerous items such as scissors, cutters, multi-purpose knives, blades and lighters at an unlawful gathering near the Legislative Council Complex. As such, the public assembly held from the night of June 11 to June 12 was assessed to be of relatively high security risk. The Police have the responsibility to take appropriate actions, including stopping suspicious persons for questioning or search, to ensure public order and public safety. Stop-and-search actions were conducted based on police officers' judgment of the prevailing situation and circumstances at the scene, and was not targeting people of specific categories or occupation.

The Police respect press freedom and the media's right of reporting, and will endeavour to facilitate media reporting and maintain effective communication and co-operation with the media. On the condition of not affecting operations, the Police have all along been facilitating media reporting as far as possible. The Police have the statutory duty to maintain law and order, public safety and public order, etc. These are responsibilities that the Police are legally required to carry out. Both the press and the Police have their respective responsibilities. It would be beneficial to both sides if the press and the Police could have better mutual understanding.

The Police have formulated relevant guidelines for officers to identify and verify the identity of media practitioners during public order events or other police operations by proof of identity or documents issued by media organisations or associations. When covering public order events, media practitioners should bring along proof of identity of reporters or testimonials issued by their companies and may wear easily recognisable clothing and armbands for easy identification by police officers at the scene.

To further enhance communication and co-operation with the media, the Police officially established the Force Media Liaison Cadre in December 2015. When necessary, the Police will deploy Cadre members to the scene of public order events or other police operations to provide facilitation and assistance to media practitioners covering the events at the scene.

In any large-scale public order event, the Police will, in light of its development, disseminate timely messages to the public through various media to remind them to pay attention to personal safety and enhance their awareness of self-protection. Members of the public (including media practitioners) should comply with the instructions of police officers at the scene.

The Police do not maintain the stop-and-search figures sought in the question.

(4) The Police's stop-and-search actions are conducted in accordance with the aforementioned ordinances. Any affected person who is dissatisfied with the Police may lodge a complaint under the complaints against police

mechanism. The mechanism is a well-established two-tier statutory mechanism, with the first tier being the Complaints Against Police Office (CAPO) of the Police which receives and investigates into complaints. The second tier is the Independent Police Complaints Council (IPCC) which is a statutory body. The two-tier complaints handling mechanism operates effectively under the Independent Police Complaints Council Ordinance (Cap 604), which provides a clear legal basis to ensure that complaints against the Police will be handled in a fair and just manner.

IPCC has decided to conduct a study with regard to the major public order events which took place since June 9 and the corresponding operations of the Police, and will make public its work progress by phase. IPCC will, as far as it is practicable to do so, strive to publish its first phase report regarding the large-scale public order events which took place between June 9 and July 2 within six months. It will submit the report to the Chief Executive and make public the details. IPCC has set up a special task force and opened multiple channels, including an electronic platform and a hotline, to allow stakeholders and the public to provide information, thereby providing full background and basis for the subsequent review of complaints. IPCC has also set up an International Expert Panel. The Expert Panel will provide international experience and advice for IPCC's study on Police practices and procedures arising from the recent public order events in Hong Kong. The Government attaches great importance to IPCC's study and will carefully study and follow up the recommendations made in IPCC's reports.

Besides, CAPO of the Police has set up a designated team to handle the relevant complaints. To ensure that the complaints are handled properly, all members of the team did not participate in relevant operations of the public order events concerned.

CAPO has received 27 complaints referred by the Hong Kong Journalists Association in relation to the operations on June 12. The complaints are being followed up by CAPO. CAPO will submit reports to IPCC upon completing the investigation. We will not comment on individual cases.