

LCQ21: Combating acts of racial vilification

Following is a question by the Hon Holden Chow and a written reply by the Secretary for Constitutional and Mainland Affairs, Mr Patrick Nip, in the Legislative Council today (January 30):

Question:

Section 45 of the Race Discrimination Ordinance (Cap. 602) (the Ordinance), which came into operation in 2008, provides that any act that incites, by any activity in public, hatred towards, serious contempt for, or severe ridicule of a person on the ground of the race of that person, is an unlawful act of racial vilification. Section 46 provides that any act of racist incitement that involves threats of physical harm towards persons of a targeted race or their property constitutes an offence of serious vilification. In this connection, will the Government inform this Council:

(1) of the respective numbers of prosecutions and convictions involving the offence referred to in section 46 since the Ordinance came into operation; whether it has assessed if such figures are on the low side and (if this is the case) the reasons for that;

(2) whether it will compile statistics on the number of claims in tort, since the Ordinance came into operation, which were lodged under civil proceedings in respect of the unlawful acts referred to in section 45; and

(3) whether it will step up law enforcement efforts to combat acts of racial vilification; if so, of the details; if not, the reasons for that?

Reply:

President,

The Government does not tolerate and strongly condemns racist views of any person or organisation. In fact, the laws of the HKSAR prohibit racist acts.

After consulting the relevant responsible bureau/department, the consolidated reply to the questions raised by Hon Holden Chow is as follows:

The Race Discrimination Ordinance (Cap. 602) (RDO) came into full operation in 2009. Section 46 of the RDO makes it a criminal offence for a person, by any activity in public, to intentionally incite hatred towards, serious contempt for, or severe ridicule of, another person or members of a class of persons on the ground of race, and which involves threatening physical harm or inciting others to threaten physical harm towards another person, or the property or premises of that other person. A person convicted of this offence is punishable by a fine of \$100,000 and imprisonment for two

years. The Police have not received any report relating to section 46 of the RDO since the implementation of the RDO in 2009. As at the end of September 2018, no one has been prosecuted under section 46 of the RDO.

Section 45 of the RDO makes it unlawful for a person, by any activity in public, to incite hatred towards, serious contempt for, or severe ridicule of, another person or members of a class of persons on the ground of race. A victim may bring a civil claim in respect of such unlawful conduct (known as vilification) pursuant to section 70. As a victim may make a civil claim in the Court directly against the wrongdoer, the Government does not normally know about the case unless it is reported by the media or the Government is named as a respondent. The Government also does not hold records on the total number of such claims. We will carefully examine how best to compile the number of such claims in an effective manner. According to the Equal Opportunities Commission (EOC), they are not aware of any cases where a person has made a successful claim for racial vilification. In 2011, the EOC received an application for legal assistance in relation to a complaint of racial vilification, but the application was not accepted due to insufficient evidence.

In addition to RDO, Section 17B(2) of the Public Order Ordinance (Cap. 245) makes it an offence for any person who in any public place behaves in a noisy or disorderly manner, or uses, or distributes or displays any writing containing threatening, abusive or insulting words, with intent to provoke a breach of the peace, or whereby a breach of the peace is likely to be caused. In some situations, such behaviour may also constitute the common law offence of outraging public decency or the offences of obstruction of public places and public nuisance under sections 4(28) and 4A of the Summary Offences Ordinance (Cap. 228).

Relevant government bureau/department and the EOC will closely monitor the situation of racial vilification/serious vilification, and review areas for improvement in a timely manner.