

LCQ3: Incident of woman sustaining eye injury

Following is a question by the Hon Chan Hak-kan and a reply by the Secretary for Home Affairs, Mr Caspar Tsui, in the Legislative Council today (July 21):

Question:

On August 11, 2019, a woman at the scene of a demonstration for opposition to the proposed legislative amendments was injured in her right eye. Immediately afterwards, there were media reports that the woman's eye injury was serious, and the injury had allegedly been caused by a bean bag round fired by the Police hitting her in the eye. Also, the incident was greatly played up on the Internet, causing more widespread and intense unrest in society. However, it was uncovered by the press in May this year that the woman's eye injury had in fact not been serious, and yet the Hospital Authority (HA) had not, on grounds of protecting patients' privacy, made any clarification on the false reports for over one year. On the other hand, the Police had, pursuant to a search warrant, obtained from the HA the woman's medical records. Subsequently, the woman was granted legal aid for filing an application for judicial review in respect of the Police's refusal to produce the search warrant to her. In this connection, will the Government inform this Council:

(1) whether it has investigated if any person or organisation had deliberately made use of the said incident to disseminate false information in order to incite hatred and discontent in society against the Government; if it has investigated, of the outcome; of the progress of the Government's study on enacting legislation to combat the acts of disseminating false information, and the expected time for enacting such legislation;

(2) whether it will request the HA to revise its information dissemination policy to permit, on public interest considerations, limited disclosure of patients' medical conditions, so as to quash any rumour; if so, of the details; if not, the reasons for that; and

(3) whether the scope of the review on the legal aid system currently undertaken by the Government includes the process for the vetting and approval of the legal aid application made by the woman, with a view to preventing abuse of the legal aid system?

Reply:

President,

National security is of paramount importance in any country. Acts

endangering national security are very severe offences. To safeguard national security, we will definitely handle, in a serious manner and in accordance with the law, electronic messages that put national security at risk.

Having consulted various departments including the Security Bureau, the Food and Health Bureau and the Chief Secretary for Administration's Office, my reply to the Hon Chan Hak-kan is as follows:

(1) As regards whether the case mentioned in the Member's question involves the dissemination of false information with a view to inciting hatred and discontent in society against the Government, the Hong Kong Special Administrative Region (HKSAR) Government has noted that there are related and other allegations regarding the case in the community. In this regard, law enforcement agencies will investigate into such allegations, taking into account the evidence and the law. Given the possibility of related legal proceedings in future, the HKSAR Government will not elaborate on individual cases at this juncture.

According to Article 43 of the Hong Kong National Security Law (HKNSL) and Schedule 4 to the Implementation Rules, the Police may require a service provider to take disabling actions on electronic messages published on an electronic platform that are likely to constitute an offence endangering national security or are likely to cause the occurrence of an offence endangering national security. "Offences endangering national security" include secession, subversion of state power, terrorist activities, and collusion with foreign or external forces to endanger national security. The relevant operations will be conducted in strict accordance with the law.

Article 3 of the HKNSL provides that the executive authorities of the HKSAR Government shall effectively prevent and suppress acts or activities endangering national security in accordance with the law. The above-mentioned power to make requirements for taking disabling actions aims to prevent and suppress offences endangering national security, and is only applicable to electronic messages published on an electronic platform that are likely to constitute an offence endangering national security or are likely to cause the occurrence of an offence endangering national security. Members of the public will not be affected and may continue with their lawful use of the Internet.

There are certain provisions in place under the existing legal framework for dealing with the dissemination of inappropriate information. For example, under sections 9 and 10 of the Crimes Ordinance, it is a criminal offence to do any act with a seditious intention or utter any seditious words, and handle or possess any seditious publication.

The Government will seriously examine the experience and the practices of other countries and places in handling fake news and false information to provide reference for the next step of work.

(2) Under its prevailing policy, the Hospital Authority (HA) may, after careful consideration of individual cases related to, assess how to disclose

information related to the public interest as appropriate on matters that involve or will be injurious to the public interest. Nevertheless, the HA respects personal privacy and has the obligation to protect patient confidentiality. In general, the HA will not disclose patient information to the public or the third party without the patient's consent.

(3) The responsibilities for formulating legal aid policy and housekeeping the Legal Aid Department (LAD) have been transferred from the Home Affairs Bureau to the Chief Secretary for Administration's Office since July 1, 2018. The LAD has in place a stringent vetting mechanism to prevent abuse of legal aid services. Legal aid will only be granted to applicants who satisfy both the merits test and the means test required under the Legal Aid Ordinance (LAO). In assessing the merits of an application, the LAD will carefully consider the background of the case, the evidence available and the legal principles applicable to determine whether legal aid should be granted.

Even if an applicant is successfully granted legal aid, the LAD will ensure that his/her case has sufficient grounds throughout the proceedings. Otherwise, the applicant's legal aid will be discharged.

Under the LAO, an applicant for legal aid whose application is refused by the LAD may appeal to the Registrar of the High Court. If the appeal is successful, the applicant will be granted legal aid. The Registrar's decision on such application shall be final.

Regarding the legal aid case mentioned in the question, the applicant applied for legal aid in January 2020 for lodging an appeal with the Court of Appeal against the High Court's earlier decision to dismiss her application for judicial review (JR). The legal aid application did not satisfy the merits test and was therefore refused by the LAD in February 2020. Subsequently, the applicant appealed to the Registrar against the LAD's decision and was allowed. As the Registrar's decision is final, the LAD must grant legal aid to the applicant in accordance with the law.

The Chief Secretary for Administration's Office and the LAD are examining the operational details such as administration, distribution of cases and selection of lawyers regarding legal aid applications for JR under the existing legal aid system, and will, as soon as possible, consult the Legal Aid Services Council on specific proposals and report to the Legislative Council Panel on Administration of Justice and Legal Services. Thank you, President.