

LCQ3: Interdiction of civil servants

Following is a question by the Hon Cheng Chung-tai and a reply by the Secretary for the Civil Service, Mr Joshua Law, in the Legislative Council today (December 18):

Question:

It has been reported that since June this year, a certain number of civil servants have been arrested in public events. In an open letter issued to all civil servants on the 15th of last month, the Secretary for the Civil Service stated that civil servants arrested for suspected involvement in unlawful public events would all be interdicted from duty. However, the Government said in the past that it would not resort to interdiction lightly; before making a decision in respect of interdiction, it would take into account certain factors, including the nature and gravity of the alleged offence or misconduct, and the possibility of the offence or misconduct being committed again. In this connection, will the Government inform this Council:

(1) of the number of civil servants arrested in public events since June this year; among them, the respective numbers of those who have been interdicted from duty and/or are currently under internal investigation; and

(2) whether there is any difference between the current interdiction arrangement and that in the past; if so, whether, before the arrangement was amended, civil servants' associations had been consulted and amendment of the relevant regulations was required, and whether it has assessed if such an arrangement will give rise to the effect of "punishment before conviction", which violates the common law principle of presumption of innocence?

Reply:

President,

The civil service has always been committed to serve the community and strive to maintain stability and prosperity of Hong Kong. Hong Kong has undergone unprecedented impact over the past few months. At this difficult time, civil servants should stand in solidarity and their priority task is to work together to end violence and chaos. To this end, I issued a letter to all civil servants in August this year, encouraging them to cherish the core values of the civil service and discharge their duties wholeheartedly. The Chief Executive also issued a letter to all civil servants in September, expressing her appreciation to colleagues for steadfastly attending to their duties and contributing their best to maintain social order. She encouraged the civil service to stand united to uphold those core values, remain calm in responding to the crisis and continue their efforts to serve the public with integrity and impartiality so as to help Hong Kong overcome the difficult situation. In another letter issued in November, I reminded civil servants to work in concert to support the Government's efforts to end violence and chaos. I also conveyed my sincere gratitude to civil servant colleagues who

have been steadfastly discharging their duties and working hard to maintain public order during the difficult times over the past few months. At the same time, I reminded civil servants to continue to do their part and strive to help Hong Kong restore order as soon as possible, and that they must not support or participate in any activity that will disrupt peace in society and the normal operation of public services.

The Government adopts a zero-tolerance attitude towards civil servants who violate the law. We are extremely concerned about the arrest of individual civil servants for their suspected involvement in unlawful public activities. It would be difficult for the community to accept if a civil servant arrested for his suspected participation in illegal activities could still return to work as normal and continue to exercise the powers and functions of his office. In this regard, we would interdict the civil servant concerned in the public interest when he is under inquiry or investigation after arrest.

My consolidated reply to the Hon Cheng Chung-tai's question is as follows:

The Government has always attached great importance to the conduct of civil servants. Civil servants must be law-abiding, dedicated, impartial and politically neutral. These values are also what the general public expects of the civil service. The Government also has an established mechanism for handling interdiction and disciplinary matters of the civil service. We have all along been handling civil service disciplinary matters in accordance with rules and regulations of the civil service under the established mechanism, with due regard to the principle of fairness and impartiality. Generally speaking, in accordance with the relevant established mechanism, the Government will, having regard to public interest, interdict a civil servant who is under inquiry or investigation for serious misconduct or criminal offence or that judicial or disciplinary proceedings have been or are to be taken against him. In considering whether the civil servant concerned should be interdicted, the relevant authority will consider various factors, including the nature and gravity of the alleged misconduct or criminal offence, possible conflict between the civil servant's misconduct and his official duties, likely harm or risk posed to the general public, public reaction and perception to the officer remaining in office to continue to exercise the powers and functions of his office, etc.

Interdiction is not a disciplinary punishment and there is no presumption of guilt in interdiction. An officer may be interdicted when the relevant authority, having regard to public interest, considers it inappropriate for him to continue to exercise the powers and functions of his public office temporarily. The existing interdiction arrangement for civil servants does not violate the principle of presumption of innocence. A decision to interdict an officer does not imply that there is any prejudgment of his guilt or any prejudice to his fair trial based on the principle of presumption of innocence. Whether an interdicted officer is guilty of an alleged criminal offence or misconduct, it is a matter to be determined by the court or disciplinary authority respectively. Whether an individual officer should be interdicted, the relevant authority will consider the

specific circumstances of each individual case. My letter issued to all civil servants in November 2019 aims at reminding civil servant colleagues that under the existing established mechanism, in considering whether a civil servant who has been arrested for his suspected involvement in unlawful activities and under inquiry should be interdicted, the relevant authority will take into account the public reaction and perception to the officer remaining in office to continue to exercise the powers and functions of his office as a consideration factor. Out of the 180 000-strong civil service, there are currently only an extremely small number of civil servants being arrested for their suspected involvement in unlawful activities in the past few months of social events. Overall, the civil service remains to be committed to the rule of law and dedicated. I hope the community would not focus on an extremely small number of civil servants being arrested and a few negative incidents and ignore the longstanding hard work and effort of the 180 000-strong civil service.

Civil servants convicted of criminal offence would not only be penalised under the law, the Government would also take disciplinary action against them in accordance with the established mechanism without toleration. For civil servants convicted of criminal offence, disciplinary action will be taken against the civil servants concerned upon conclusion of the relevant criminal proceedings. The disciplinary punishment to be imposed could include verbal warning, written warning, reprimand, severe reprimand, reduction in rank, compulsory retirement or dismissal, etc. In determining the level of punishment, the relevant authority will examine the judgement and sentence of the criminal offence and take into account factors including the nature and gravity of the misconduct or criminal offence, the level of punishment for similar misconduct or criminal offence, any mitigating factors, and the rank, service and disciplinary records of the civil servant concerned, etc.

Thank you, President.