

LCQ4: Rule of law

Following is a question by the Hon Tam Yiu-chung and a reply by the Secretary for Justice, Mr Rimsky Yuen, SC, in the Legislative Council today (November 26):

Question:

Some members of the public have relayed to me that the remarks about the rule of law recently made on a number of occasions by some politicians with legal background, who are also supporters of the illegal road occupation movement, may have misled the public. For instance, these politicians have claimed that even if some people have deliberately breached the law, the rule of law will not be undermined insofar as they subsequently turn themselves in to bear the legal consequences, and that the rule of law does not mean unconditional compliance with the law. In addition, these politicians have also criticised the Police for their earlier arrest of two occupiers for allegedly fighting with three other persons in a public place, claiming that these two occupiers were then merely exercising "the power of citizens to arrest" under section 101A of the Criminal Procedure Ordinance ("section 101A") to stop those three persons from throwing objects at the occupiers. In this connection, will the Government inform this Council:

(1) whether it has studied the impacts of the aforesaid remarks made by these politicians (i.e. the rule of law will not be undermined insofar as the people who have deliberately breached the law subsequently turn themselves in, and the rule of law does not mean unconditional compliance with the law, etc.) on the proper understanding of the public about the concept of the rule of law; if the study outcome indicates that there are negative impacts, how the authorities will refute such remarks; if the study outcome indicates that there are no negative impacts, of the justifications for that;

(2) whether it will step up publicity and education to instill in members of the public the correct concept of the rule of law; if it will, of the details; if not, the reasons for that; and

(3) whether it can clearly explain "the power of citizens to arrest" under section 101A in concrete terms, including the criteria for determining whether members of the public have lawfully exercised such power, as well as the degree of force they may use in arresting suspected offenders?

Reply:

President,

The rule of law is a fundamental core value of the Hong Kong society; it is also one of the important reasons which makes Hong Kong an international city as well as an international financial and commercial centre. In order to effectively maintain the rule of law, the citizens, the government and the entire community must respect the rule of law, including paying respect to court decisions. Besides, the rule of law is the cornerstone of democracy. The aspiration to attain universal suffrage surely cannot be used as a pretext to challenge the rule of law.

The reply of the Department of Justice (DoJ) to the three-part question raised by the Hon Tam is as follows:

(1) Since the beginning of the "Occupy Central" movement, different members of the community have made remarks on the rule of law. The remarks mentioned in the Hon Tam's question have seriously distorted the spirit of the rule of law. On November 10, the Honourable Mr Justice Au of the Court of First Instance of the High Court ruled on the applications for interim injunction made in the three cases concerning the occupy movement. The relevant judgment contained a clear exposition of the concept of the rule of law. The key points

include:

(i) The concept of the rule of law must include the notion that every citizen and the government alike should obey and comply with the law.

(ii) Even if the defendants are of the view that a court order is wrongly granted, instead of simply disobeying it, they should first comply with it and then seek to challenge that order pursuant to the judicial process. The law cannot allow obedience of its orders to be a matter of individual choice.

(iii) It is wrong for any suggestions that the rule of law is not undermined or under challenged if people can freely or intentionally disobey the law first and then accept the consequences of breaking the law. The rule of law cannot realistically and effectively operate in a civilised and orderly society on this basis.

(iv) The upholding of the rule of law must be built upon, among others, the due administration of justice for the enforcement of court orders and the law.

(v) Worryingly, there have been repeated open suggestions by a number of public figures (including some legally trained individuals) to the public and the protestors and demonstrators en masse to the effect that ex parte injunctions need not to be complied with until they had been determined after an inter partes hearing, and that there is no challenge to the rule of law from merely disobeying civil orders, and that the rule of law is only threatened when there is disobedience of an actual order of committal for contempt of court. These suggestions are wrong and incorrect and would cause the public and the defendants an unwarranted misunderstanding on the concept of the rule of law.

When the Court of Appeal dealt with the relevant applications for leave to appeal, it clearly stated that it

echoed the above observations made by the Honourable Mr. Justice Au. The Government welcomes the courts' exposition of the concept of the rule of law. We appeal to members of the public to obey and comply with the law and court orders, and to express their views in a peaceful and law abiding manner, or else there would be profound negative impact on Hong Kong.

(2) The DoJ has all along worked closely with other government departments and bureaux to educate the public on the concept of the rule of law through various channels. For example, the DoJ organises "Prosecution Week" and actively participates in the "Law Week" organised by the Law Society of Hong Kong on an annual basis so as to enhance the understanding of students and the public in respect of the justice system and the rule of law. Further, the DoJ participates in the works of the Committee on the Promotion of Civic Education, which, inter alia, promotes education on the rule of law in various ways. Further, the Police seek to raise citizens' awareness of law abiding and crime prevention through various channels. As regards primary and secondary schools, the Education Bureau has embedded the legal and rule of law education in the current primary and secondary school curricula. Schools also foster students' values in respecting the rule of law through diversified learning experiences including court visits. The Government will continue these works, and is proactively considering various ways to enhance this area of work.

(3) Section 101 of the Criminal Procedure Ordinance (the CPO) (Cap. 221 of the Laws of Hong Kong) sets out the circumstances where a citizen has the power to make an arrest. Section 101(2) stipulates that "[a]ny person may arrest without warrant any person whom he may reasonably suspect of being guilty of an arrestable offence", while section 101(4) states that "[e]very person who finds any person in possession of any property which he, on reasonable grounds, suspects to have been obtained by means of an arrestable offence may arrest such last-mentioned person without warrant and take

possession of the property".

Thus, "the power of citizens to arrest" as referred to in the question is applicable only in circumstances involving an "arrestable offence". Under Section 3 of the Interpretation and General Clauses Ordinance (Cap. 1 of the Laws of Hong Kong), an "arrestable offence" means an offence for which the sentence is fixed by law or for which a person may under any law be sentenced to imprisonment for a term exceeding 12 months, and including any attempt to commit any such offence.

On the other hand, section 101A of the CPO stipulates that "(a) person may use such force as is reasonable in the circumstances in the prevention of crime or in effecting or assisting in the lawful arrest of offenders or suspected offenders or of persons unlawfully at large".

As a law enforcement agency, the duties of the Hong Kong Police Force include upholding the law. The police have the statutory power to arrest persons suspected of having committed an offence. Should citizens witness any person committing an offence, they should report to the Police at once. If citizens find it necessary to stop any criminal act or to subdue any suspected offender, they may only use such force as is reasonable and proportionate in the circumstances to control the suspect but they do not have the power to search. Whether the offence in respect of which an arrest is made by a citizen constitutes an "arrestable offence" and whether the force used was reasonable can only be determined after the Police have made comprehensive investigation.

Ends/Wednesday, November 26, 2014