

HKSAR Government vehemently condemns groundless accusations by foreign governments against NPCSC decision

In response to the recent groundless accusations by the government and entities of foreign countries against the decision by the Standing Committee of the National People's Congress (NPCSC) on the qualification of members of the Legislative Council (LegCo) of the Hong Kong Special Administrative Region (HKSAR), a spokesperson for the HKSAR Government expressed its staunch opposition and strongest condemnation today (November 14).

The spokesperson said that such accusations were politically motivated with the ulterior motive to undermine the relationship between the Central Authorities and the HKSAR under "One Country, Two Systems". They were also flagrant interference by a country or government into the internal affairs of another country or government, breaching the basic guiding principles of international relations.

Hong Kong is an inalienable part of the People's Republic of China (PRC) and Article 12 of the Basic Law of the HKSAR of the PRC stipulates that the HKSAR shall be a local administrative region of the PRC, which shall enjoy a high degree of autonomy and come directly under the Central People's Government (CPG). Article 104 of the Basic Law requires designated public officers including LegCo members, when assuming office, to swear to uphold the Basic Law and swear allegiance to the HKSAR in accordance with the law. Such requirements are also the legal prerequisite and conditions for an individual to run for election as prescribed in Hong Kong's relevant local legislation. Previous court rulings have confirmed that these legal prerequisites are substantive.

Indeed, swearing allegiance to the system of the country and upholding laws of the state is an international norm for public officers and any breach of the oath will not be tolerated. For instance, members of the United States (US) Congress must swear that they will support and defend the US Constitution or face criminal charges. In the United Kingdom, Members of Parliament who refuse to take an oath of allegiance to the Crown cannot assume office. No country will turn a blind eye to the breaching of oaths or acts of treason by public officers including legislators.

"By criticising resolute actions of the CPG and the HKSAR Government to disqualify four LegCo members who have been confirmed in accordance with the law to have breached the statutory requirements in their oath, those foreign political figures are clearly applying double standards, the same tactic they deployed in vilifying the Hong Kong National Security Law," the spokesperson added.

To put the issue in its proper context, the spokesperson pointed out that in recent years, some people of Hong Kong openly advocated the notion of

"Hong Kong independence". Several LegCo members-elect of the sixth term LegCo, in taking the oath under Article 104 of the Basic Law, deliberately altered the wording of the oath to advocate the notion of "Hong Kong independence". This had led the NPCSC, the highest organ of power in the PRC charged with the responsibility to monitor the implementation of the Basic Law, to make an Interpretation of Article 104 on November 7, 2016. The Interpretation which is legally binding on the HKSAR makes it clear that, if a person makes a false oath, or, who, after taking the oath, engages in conduct in breach of the oath, the person shall bear legal responsibility in accordance with the law.

Four members of the sixth-term LegCo, namely Mr Alvin Yeung, Dr Kwok Ka-ki, Mr Dennis Kwok and Mr Kenneth Leung, have submitted nomination to run for the 2020 LegCo General Election that was originally scheduled for September 6. Their nominations were invalidated by Returning Officers before the end of the nomination period, and they hence lost the qualification for running for the election of the seventh-term LegCo. The Returning Officers clearly stated that the behaviour of the four persons was not in compliance with the declaration requirement for candidates under relevant section of the Legislative Council Ordinance (Cap. 542), i.e. to uphold the Basic Law and pledge allegiance to the HKSAR of the PRC.

In view of the severe epidemic situation of the COVID-19 epidemic, the HKSAR Government announced on July 31 that the 2020 LegCo General Election would be postponed for a year. To resolve the problem of a lacuna in the legislature arising from the postponement of the election of the seventh-term LegCo for a year, the NPCSC made a decision that the sixth-term LegCo "will continue to discharge its duties for no less than one year until the commencement of the seventh-term LegCo of the HKSAR." That decision of the NPCSC was made for handling the continued operation of the sixth-term LegCo, and did not touch on whether members of the sixth-term LegCo were qualified to stay or not.

The four LegCo members were decided by Returning Officers in accordance with the law to be not genuinely upholding the Basic Law and honouring the pledge of allegiance to the HKSAR of the PRC. It would be illogical to allow persons who were ineligible to contest in a LegCo election to continue to discharge their duties as members of the LegCo. As the above-mentioned issue involves the NPCSC's decision made on August 11 and its Interpretation of Article 104 of the Basic Law, the HKSAR Government could not have decided on the qualification of the four members on its own. Therefore, it requested the CPG to invite the NPCSC to resolve the problem from a constitutional perspective.

The NPCSC decision made on November 11 is constitutional, lawful and necessary. It set out clearly the consequences of LegCo members violating the legal prerequisites of "upholding the Basic Law of the HKSAR of the PRC" and "swearing allegiance to the HKSAR of the PRC". By stipulating that such consequences were applicable to LegCo members who were confirmed in accordance with the law to be ineligible to become candidates for LegCo election, it provided the solid legal basis for the HKSAR Government to announce their disqualification. It is a timely act to ensure the faithful

implementation of "One Country, Two Systems" and safeguard the constitutional order of the HKSAR. There is no question of "destroying 'One Country, Two Systems' or a high degree of autonomy" as claimed by a few. It is also far from the truth for others to accuse the NPCSC decision of stifling human rights or freedoms, or undermining democracy or the legislature's checks and balance over the executive. The HKSARG denounces any such irresponsible remarks by foreign political figures.

The HKSAR Government reiterates that Hong Kong matters are internal affairs of the PRC, and once again demanded relevant foreign governments and individuals to adhere to the International Law and the basic guiding principles of international relations, and cease to interfere in HKSAR affairs in any manner.