

LCQ6: Eligibility for candidacy of persons who have chanted certain slogan to run for Legislative Council election

Following is a question by the Hon Claudia Mo and a reply by the Secretary for Constitutional and Mainland Affairs, Mr Patrick Nip, in the Legislative Council today (May 16):

Question:

It has been reported that late last month, a former Director of the Hong Kong and Macao Affairs Office of the State Council was asked by the media on whether people who had chanted "end the one-party dictatorship" slogan in the Hong Kong Special Administrative Region (HKSAR) might run for the Legislative Council (LegCo) election. He replied that "it should be the case that they may not, as such an act contravenes the Country's Constitution and is an unlawful act". In this connection, will the Government inform this Council:

(1) if it knows whether there is any legal basis for the statement that chanting the "end the one-party dictatorship" slogan in HKSAR is an unconstitutional and unlawful act; if there is, of the details;

(2) whether a Returning Officer (RO), when determining the validity or otherwise of a nomination of a candidate for the LegCo election in future, will be required to consider if that person has previously done the following acts: having chanted the "end the one-party dictatorship" slogan, having joined an organisation whose political platform consists of such a slogan, and having participated in activities organised by this type of organisations; whether an RO may decide that the nomination of a candidate is invalid on the ground that the candidate has previously done these acts; and

(3) whether there are other provisions in the Constitution, apart from Article 31 of the Constitution under which HKSAR was established, that are applicable to HKSAR; if so, of such provisions and the legal basis for their being applicable to HKSAR, as well as the legal consequences to be borne by those Hong Kong people who have contravened such provisions?

Reply:

President:

Having consulted the Department of Justice, our consolidated reply to Hon Claudia Mo's question is as follows:

According to the Preamble of the Constitution of the People's Republic of China (Constitution), "[t]he Constitution, in legal form, affirms the achievements of the struggles of the Chinese people of all nationalities and

defines the basic system and basic tasks of the State; it is the fundamental law of the State and has supreme legal authority. The people of all nationalities, all State organs, the armed forces, all political parties and public organizations and all enterprises and institutions in the country must take the Constitution as the basic standard of conduct, and they have the duty to uphold the dignity of the Constitution and ensure its implementation." (Note)

Article 31 of the Constitution provides that "[t]he State may establish special administrative regions when necessary. The systems to be instituted in special administrative regions shall be prescribed by law enacted by the National People's Congress (NPC) in the light of specific conditions". Article 62 of the Constitution prescribes the functions and powers that may be exercised by the NPC, including, as provided by subparagraph (14), "to decide on the establishment of special administrative regions and the systems to be instituted there". In accordance with the Constitution, the NPC enacted the Basic Law of the Hong Kong Special Administrative Region (HKSAR) of the People's Republic of China (Basic Law), prescribing the systems to be practised in the HKSAR, in order to ensure the implementation of the basic policies of the People's Republic of China regarding Hong Kong, namely, "one country, two systems", "Hong Kong people administering Hong Kong" and a high degree of autonomy.

At the Celebrations of the 20th Anniversary of Hong Kong's Return to the Motherland and the Inaugural Ceremony of the Fifth Term Government of the HKSAR on July 1 last year, President Xi Jinping clearly stated that "[t]he Basic Law is a basic legislation enacted in accordance with the Constitution. It stipulates the systems and policies practised in the HKSAR, codifies into law and makes institutional arrangement for the principle of 'one country, two systems', and provides legal safeguards for the practice of 'one country, two systems' in the HKSAR." Article 11(1) of the Basic Law stipulates that, in accordance with Article 31 of the Constitution, the systems and policies practised in the HKSAR, including the social and economic systems, the system for safeguarding the fundamental rights and freedoms of its residents, the executive, legislative and judicial systems, and the relevant policies, shall be based on the provisions of the Basic Law.

As Article 31 of the Constitution already authorises the NPC to prescribe the systems to be instituted in special administrative regions by law, in accordance with Article 31 of the Constitution, the systems and policies of the HKSAR that were prescribed in the Basic Law and enacted by the NPC shall have an overriding status. Therefore, the provisions on the socialist system and policies in the Constitution are not implemented in the HKSAR.

The Constitution and the Basic Law form the constitutional basis of the HKSAR. Under this constitutional framework, we must be well aware that the political party system of the People's Republic of China is a system of multi-party co-operation and political consultation led by the Communist Party of China. The HKSAR is an inalienable part of the People's Republic of China. We must respect the Constitution. While the HKSAR implements "one country, two systems" in accordance with the provisions in the Basic Law, the

HKSAR must also respect the system in the Mainland.

As regards the parts relating to the Legislative Council election in the question, the Legislative Council Ordinance (Cap 542) clearly stipulates that a person intending to run in a Legislative Council election must make a declaration to the effect that he/she will uphold the Basic Law and pledge allegiance to the HKSAR. In accordance with the Legislative Council Ordinance and Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (Cap 541D), the Returning Officers must, based on the specific circumstances of each case, decide whether or not a person intending to run in the election is validly nominated as a candidate.

We will continue to perform the relevant duties in accordance with the law and ensure that elections are conducted in a fair, open and honest manner.

Thank you Mr President.

Note: This English translation of the Preamble of the Constitution of the People's Republic of China is a direct quote from the official website of the National People's Congress of the People's Republic of China (www.npc.gov.cn/englishnpc/Constitution/2007-11/15/content_1372962.htm).