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Dear editor,

The Standing Committee of the National People's Congress on 11 November 2020 made a decision on the qualification of members of the Legislative Council (LegCo) of the Hong Kong Special Administrative Region (HKSAR). The HKSAR Government accordingly announced that four members of the sixth-term LegCo were disqualified from being LegCo members. You may be following the relevant news and development. I would like to take this opportunity to apprise you of the rationales for this decision and the relevant background.

Hong Kong is an inalienable part of the People's Republic of China (PRC). 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.

I believe you would agree that 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. Instances abound in many countries, including the United States and the United Kingdom. No country will turn a blind eye to the breaching of oaths by public officers including legislators.

Earlier this year, four members of the sixth-term LegCo, namely Mr Alvin Yeung, Dr Kwok Ka-ki, Mr Dennis Kwok and Mr Kenneth Leung, submitted nomination to run in the 2020 LegCo General Election for the seventh term that was then originally scheduled for 6 September 2020. Their nominations were invalidated by Returning Officers (ROs) in accordance with the law before the end of the nomination period, and they hence lost the qualification for running in the said Election. The ROs found that all four members solicited intervention by foreign governments or political authorities in relation to HKSAR's affairs whereas Mr Yeung, Dr Kwok and Mr Kwok also expressed an intention to indiscriminately vote down any legislative proposals, appointments, funding applications and budgets introduced by the HKSAR Government after securing a majority in the LegCo so as to force the Government to accede to certain political demands. The ROs were of the view that the behaviour of these four persons was not in compliance with the declaration requirement under section 40(1)(b)(i) 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 COVID-19, the HKSAR Government announced on 31 July 2020 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, the NPCSC made a decision on 11 August 2020 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 focused only on the handling of the continued operation of the sixth-term LegCo, and did not touch on whether individual members of the sixth-term LegCo would be able to stay or not.

The four LegCo members were determined by ROs in accordance with the law to be unfit to stand in the LegCo election, because their prior conduct conflicted with the oaths of allegiance to the HKSAR and to uphold the Basic Law. This is obviously sensible and logical for if they are found to be unfit to stand for election to LegCo, it must follow that they are also unfit to continue to discharge their duties as members of the LegCo. As the above-mentioned issue involves the NPCSC's decision made on 11 August 2020 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 11 November 2020 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 was a timely act to ensure the faithful implementation of "One Country, Two Systems" and safeguard the constitutional order of the HKSAR.

I would like to stress that there is no question of *"destroying 'One Country, Two Systems' or a high degree of autonomy"* as claimed by a few. The decision does not affect the rights and freedom, including freedom of speech and freedom of the press, enjoyed by the citizens of Hong Kong. The HKSAR Government is committed to fostering Hong Kong's continued growth and prosperity underpinned by the rule of law and the principle of "One Country, Two Systems", including our common law system and the quality, independence and impartiality of our Judiciary.

Best regards,

Law Kin-wai

Director-General
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