

17 November, 2020

Editor
Australian Broadcasting Corporation
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Dear Editor,

I refer to the reports "Marise Payne criticises China's latest crackdown on Hong Kong for undermining 'democratic processes'" (12 November) and "Hong Kong's leader Carrie Lam went to China frustrated with four council members. Within days, Xi Jinping delivered her a gift" (13 November) which contain misunderstandings about the decision by the Standing Committee of National People's Congress (NPCSC) on the qualification of members of the Hong Kong Legislative Council (LegCo).

Four members of the sixth-term LegCo, namely Mr Alvin Yeung, Dr Kwok Ka-ki, Mr Dennis Kwok and Mr Kenneth Leung, had submitted nomination to run for the 2020 LegCo General Election that was originally scheduled for 6 September. 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 People's Republic of China (PRC).

In view of the severe epidemic situation of the COVID-19 epidemic, the HKSAR Government announced on 31 July 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 11 August 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 Central People's Government (CPG) to invite the NPCSC to resolve the problem from a constitutional perspective.

The NPCSC decision made on 11 November 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 bills and funding proposals tabled by the HKSAR Government still require LegCo's approval in accordance with the law. Regardless of the number of LegCo members, the HKSAR Government will, as always, endeavour to address the concerns of the members who represent the public, and ensure that our policies meet public needs.

Yours sincerely,

Raymond Fan

Director

(Representative to Australia and New Zealand)