

November 17, 2020

The Editor
Letters to the Editor
The Globe and Mail
By Email: letters@globeandmail.com

Dear Editor,

I refer to the editorial “Beijing’s idea of ‘democracy’ in Hong Kong” published on November 16, 2020 which contains 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).

The National People’s Congress (NPC) is the highest organ of state power, whereas the NPCSC is the NPC’s permanent body. It has the authority to interpret the Basic Law, to monitor the implementation of the Basic Law, and to handle any constitutional problems arising from the implementation of the Basic Law in accordance with the law. The decision made by the NPCSC in accordance with the law is legally binding on the Hong Kong Special Administrative Region (HKSAR).

Article 104 of the Basic Law stipulates that LegCo members “must, in accordance with law, swear to uphold the Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China and swear allegiance to the Hong Kong Special Administrative Region of the People’s Republic of China”. 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. According to the Interpretation of Basic Law Article 104 made by the NPCSC on November 7, 2016, if a person, after taking the oath, engages in conduct in breach of the oath, the person shall bear legal responsibility in accordance with the law.

In view of the severe epidemic situation of COVID-19, 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 on August 11 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.

Meanwhile, 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 had determined that the behaviour of these four members were 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 People’s Republic of China (PRC).

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 decide on the qualification of the four members on its own. Therefore it requested the Central People's Government 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.

The HKSAR Government fully recognises that the rule of law is the cornerstone of Hong Kong's long-term prosperity and stability, and is determined to safeguard this core value at all times.

Sincerely,
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Director
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