

**President's ruling on  
motion on "Opposing interpretation of the Basic Law by the Standing  
Committee of the National People's Congress"  
proposed by Hon LEUNG Kwok-hung for debate at the  
Legislative Council meeting on 11 May 2005**

Hon LEUNG Kwok-hung has, in accordance with Rule 29(1) of the Rules of Procedure, given notice to move the following motion on "Opposing interpretation of the Basic Law by the Standing Committee of the National People's Congress" at the Council meeting to be held on 11 May 2005:

(Translation)

"That this Council regrets that the Government of the Hong Kong Special Administrative Region (SAR) has twice requested the Standing Committee of the National People's Congress (NPCSC) to interpret the provisions of the Basic Law in 1999 and 2005 respectively, and demands the SAR Government to apologize to the people of Hong Kong for doing so and to undertake not to make any further request for the NPCSC to interpret the Basic Law; at the same time, this Council does not accept the NPCSC's passing of the draft interpretation in respect of Article 53 of the Basic Law regarding the term of office of the new Chief Executive; furthermore, this Council also urges the NPCSC to withdraw its decision made on 26 April 2004 to rule out the election of the Chief Executive and all Members of the Legislative Council by universal suffrage in 2007 and 2008 respectively in Hong Kong, which throttles the rights of the people of Hong Kong to a high degree of autonomy and to the full implementation of election by universal suffrage, as well as demands the Chief Secretary for Administration Mr Donald TSANG to rescind the four constitutional development reports prepared on the basis of the '26 April Decision', so as to give the public a true picture of the facts."

2. The above motion consists of five parts, namely:
  - (a) to express the regret of the Council over the two requests made by the Government of the Hong Kong Special Administrative Region (SAR) for the Standing Committee of the National People's Congress (NPCSC) to interpret the provisions of the Basic Law;

- (b) to demand the SAR Government to apologize to the people of Hong Kong for doing so and to undertake not to make any further request for the NPCSC to interpret the Basic Law;
- (c) to express that this Council does not accept the NPCSC's passing of the draft interpretation in respect of Article 53 of the Basic Law regarding the term of office of the new Chief Executive;
- (d) to urge the NPCSC to withdraw its decision made on 26 April 2004 to rule out the election of the Chief Executive and all Members of the Legislative Council by universal suffrage in 2007 and 2008 respectively in Hong Kong, which throttles the rights of the people of Hong Kong to a high degree of autonomy and to the full implementation of election by universal suffrage; and
- (e) to demand the Chief Secretary for Administration Mr Donald TSANG to rescind the four constitutional development reports.

### **My opinion**

3. Having considered the motion in detail and the advice of Counsel to the Legislature, I am of the view that part (c) and part of part (d) of the motion are out of order, for the following reasons.

- (a) **Part (c): "that this Council does not accept the NPCSC's passing of the draft interpretation in respect of Article 53 of the Basic Law regarding the term of office of the new Chief Executive"**

The NPC is the highest organ of state power, with the NPCSC being its permanent body. The NPCSC is vested with the power under the Constitution and the Basic Law to interpret Article 53 of the Basic Law regarding the term of office of the new Chief Executive. A motion that advocates "that this Council does not accept the NPCSC's passing of the draft interpretation in respect of Article 53 of the Basic Law regarding the term of office of the new Chief Executive" is tantamount to urging this Council to defy the constitutional power of the NPCSC. It is out of order for this Council, as the legislature of the SAR, to debate this part of the motion.

- (b) **Part (d): "the decision (of the NPCSC) ... to rule out the election of the Chief Executive and all Members of the Legislative Council by universal suffrage in 2007 and 2008 respectively ... throttles the rights of the people of Hong Kong to a high degree of autonomy and to the full implementation of election by universal suffrage"**

According to the rulings I made last year, it is out of order to debate a motion (including its amendments) containing accusatory expressions against the character of the NPCSC or the acts of the NPCSC undertaken according to law which would likely degrade it in the public estimation.

Article 5 of the Basic Law reflects the state policy of "one country, two systems" while Article 12 stipulates that the SAR shall be a local administrative region of the People's Republic of China enjoying a high degree of autonomy. Hence, the statement in the motion that the decision of the NPCSC "throttles the rights of the people of Hong Kong to a high degree of autonomy" suggests that the NPCSC made a decision that violates the Basic Law. It is an accusatory expression referred to above and is out of order.

Articles 45 and 68 stipulate respectively that the ultimate aim is the election of the Chief Executive and all the Members of the Legislative Council by universal suffrage. Therefore, to state in the motion that the decision of the NPCSC throttles the right of the people of Hong Kong to the full implementation of election by universal suffrage may be suggesting that the NPCSC made a decision that violates the Basic Law. It is also an accusatory expression and is out of order. However, it will not be out of order if the expression clearly states that universal suffrage cannot be implemented in 2007 and 2008, and is not suggesting that ultimately the election of the Chief Executive and all the Members of the Legislative Council will not be by universal suffrage. The expression does not constitute an accusation that the NPCSC made a decision that violates the Basic Law.

## **Ruling**

4. I rule under Rule 30(3)(c) of the Rules of Procedure that the proposed motion is out of order and should be returned to Mr LEUNG. However, if Mr LEUNG submits for my approval, by 9.00 am on Tuesday 3 May 2005, a replacement motion with the deletion of part (c) and the words "to a high degree of autonomy and" in part (d), together with changes to those words which I have directed through the Secretariat as requiring amendments, I shall waive the notice required for its submission.

( Mrs Rita FAN )  
President  
Legislative Council

30 April 2005