

**House Committee of the
Legislative Council**

**Interpretation of Articles 22(4) and 24(2)(3) of the Basic Law by
The Standing Committee of the National People's Congress**

Introduction

The paper informs Members of the interpretation given by the Standing Committee of the National People's Congress (NPCSC) on 26 June 1999, under the relevant provisions of the Constitution and the Basic Law (BL), of Articles 22(4) and 24(2)(3) of the Basic Law. This paper also sets out the Administration's position on who benefit from the principle that judgments previously rendered will not be affected.

Background

2. After the Court of Final Appeal (CFA) delivered judgments on right of abode (ROA) issues on 29 January 1999, this Council has been briefed on the Administration's assessment of the implications of the judgments and the reasons for seeking an NPCSC's interpretation of BL 22(4) and 24(2)(3) according to their true legislative intent. The State Council accepted on 10 June the Chief Executive's request on seeking an NPCSC's interpretation and approached the NPCSC accordingly. After consulting its Committee for the Basic Law, the NPCSC gave an interpretation of the two BL provisions on 26 June. The Chinese text of the interpretation has been sent to Members on that day. The bilingual text has been promulgated in the Gazette today and is now attached.

NPCSC Interpretation

3. The gist of the NPCSC's interpretation is -
- (a) under BL 22(4), the phrase "people from other parts of China" means people from various provinces, autonomous regions and municipalities directly under the Central Government, including persons of Chinese nationality in the Mainland born of Hong Kong permanent residents. This confirms that Mainland exit procedures, including the One-way Permit quota arrangement for settlement in Hong Kong, apply to all such Mainland residents; and
 - (b) the NPCSC clarifies that under BL 24(2)(3), persons of Chinese nationality born outside Hong Kong are eligible for right of abode only if, at the time of their birth, at least one of their parents belongs to the category listed in BL 24(2)(1) or 24(2)(2).

In the interpretation, NPCSC also states that parties concerned in the litigation in respect of which the CFA delivered a judgment on 29 January 1999 shall not be affected by the interpretation.

The Administration's Decision

Categories of persons affected by the interpretation

4. The Administration considers that there are two periods by reference to which persons can be categorized for deciding who can

benefit from the principle that judgments previously rendered will not be affected -

(A) 1 July to 10 July 1997

(B) 11 July 1997 to 29 January 1999

5. These periods refer to the date on which the persons were present in Hong Kong and lodged ROA claims with the Director of Immigration.

6. For persons in category (A), the CFA has ruled that those who were in Hong Kong in the period between 1 July and 10 July 1997 are not subject to the C of E Scheme because the Immigration (Amendment) (No.3) Ordinance enacted on 11 July 1997 does not have retrospective effect. They do not have to return to the Mainland to have their status verified. Provided they satisfy the criteria for ROA under either CFA judgment, they will retain that status despite the interpretation.

7. Category (B) includes persons who approached the Immigration Department between 11 July 1997 and 29 January 1999 to claim ROA. Their removal was delayed up to 29 January 1999 pending the CFA's judgment and, thereafter, pending the outcome of the subsequent judicial review brought by 17 Mainland overstayers against the Director of Immigration's removal orders against them.

Considerations

8. The CFA's judgment on retrospectivity has not been affected by the NPCSC's interpretation. We consider that there is no question of the right of abode of persons in Category (A) being affected by the NPCSC's interpretation.

9. As for persons in category (B), they comprise the following groups -

- (1) the litigants themselves in respect of the two cases on which the CFA ruled on 29 January 1999 (other than those in Category (A)); and
- (2) those who were indirectly parties to those proceedings by virtue of undertakings. These undertakings were made by the Director of Immigration to the effect that, if they did not bring proceedings on these same issues, they would nevertheless be treated the same way as the litigants themselves.

10. We consider all persons in category (A) and (B), i.e. those who were in Hong Kong and who, between 1 July 1997 and 29 January 1999 (inclusive of both dates), made a claim to the Director of Immigration to the effect that they were entitled to the right of abode, be regarded by the Director as being parties involved in the CFA judgment. This is because, had they brought proceedings, they would have been parties to the CFA judgment and would be unaffected by the NPCSC interpretation.

11. The Director of Immigration's record shows that there are 3700 persons in category (A) and (B). The ROA claims by some of them have already been verified. Those whose ROA has been established have been so informed. Their number is 964. Of the other persons (totalling about 2 700) whose claims will fall to be processed in accordance with the CFA judgment-

- (a) about 900 of them are currently in Hong Kong. They will not need to return to the Mainland before their claims are processed and results made known; and
- (b) the remaining 1 800 have returned to the Mainland. The Director of Immigration will discuss with the Mainland authorities to arrange for their entry when their claims for ROA have been established.

12. We do not consider that other persons can benefit from the principle that judgments previously rendered shall not be affected, including those who made their claims after 29 January 1999. They cannot claim to be parties to the CFA judgment. The NPCSC interpretation has expressly stated that only the parties concerned in the relevant litigation on which the CFA delivered a judgment on 29 January 1999 shall be unaffected by the interpretation. All other ROA claims must be processed by reference to the provisions of the NPCSC interpretation.

Legislative Amendments

13. The interpretation automatically applies as law in Hong Kong, just as the Basic Law applies here. However, in order to remove any doubt that may have arisen, following the CFA ruling and the NPCSC interpretation, as to the current text of the Immigration Ordinance, we will introduce legislative amendments to the Immigration Ordinance, its Schedule 1 and Form 12 in the Immigration Regulations. Consequential changes to the gazette notice issued by the Director of Immigration on 11 July 1997 will also be made. With regard to the amendments to Schedule 1 to the Immigration Ordinance, we are giving on 28 June a notice to this Council of our intention to move a resolution making the amendments at the sitting of the Council on 14 July. As to other amendments to the Immigration Ordinance and the Immigration Regulations, we will introduce an amendment bill to this Council as soon as possible in the next legislative session.

Security Bureau
28 June 1999