

(By Fax and By Post)

Total : 3 pages

2525 7633
2801 7134

5 May 2000

Ms Elsie LEUNG, JP
Secretary for Justice
4th floor, High Block
Queensway Government Office
Hong Kong

Dear Ms LEUNG,

Panel on Administration of Justice and Legal Services

Rule of law and related matters

I have been asked by the Panel to write to you concerning the above subject which was discussed by the Panel on 18 April 2000 at which representatives from your Department and the Hong Kong Bar Association submitted papers.

The Government's decision to request for an interpretation by the NPCSC of Articles 22(4) and 24(2)(3) of the Basic Law in May 1999 has aroused widespread concern in the rule of law and judicial autonomy in the community and overseas. These concerns were shared and have been strongly expressed by some Members at the meeting. They demand that the Government give an unequivocal assurance that it would not again seek an interpretation from the NPCSC in order to restore the confidence in Hong Kong's legal system. A similar demand has been made by the Bar Association that the Government undertakes not to seek an interpretation of the NPCSC except through judicial referral under Article 158(3) of the Basic Law.

On behalf of the Administration, the Acting Solicitor General Mr R C ALLCOCK declined to do so. He merely reiterated that the Government would only seek an NPCSC interpretation in highly exceptional circumstances.

Such a reply cannot meet the deep concern of Members or the wider public who plainly fear a recurrence. I am therefore conjoined to write to you to request for a full explanation of the reasons why the Government refuses to give such an assurance. In view of the clear implications for the future, I am sure you would agree that the request is reasonable and justified.

In making this request, Members have also taken note of the following matters on which they invite your response -

- (a) The Bar Association has pointed out that there is no provision in the Basic Law for referring a question to the NPCSC for interpretation, except by judicial referral through the Court of Final Appeal under Article 158(3). What the Government in fact did was to seek an interpretation which has the effect of an amendment, thereby defeating the purpose of the amendment procedure provided under Article 159 of the Basic Law.
- (b) The views of some legal practitioners and academics expressed in learned articles that the Government's decision to seek an interpretation from the NPCSC in respect of the two Articles in the Basic Law is unlawful and unconstitutional.

The Panel has noted the Administration's paper entitled "Measures to promote the rule of law and judicial independence, and to enhance confidence in Hong Kong's legal system" in which "misconceptions" versus the "true position" regarding the request for the NPCSC interpretation are set out. Members do not feel their concerns or those of the public have been fully addressed. In particular, they wish to point out -

- (a) In para. 6(1) of the paper, it is said that the NPCSC can only interpret the Basic Law and national laws applicable to Hong Kong but cannot interpret local legislation. This is of little comfort. First, the implication that the NPCSC can interpret all provisions of the Basic Law including those within Hong Kong's autonomy is contrary to the common expectation of the public and inconsistent with Hong Kong's autonomy. Secondly, even if the NPCSC cannot interpret local legislation, since local legislation may be drafted on the basis of provisions of the Basic Law, and moreover can be invalidated if inconsistent with the Basic Law, an interpretation of the NPCSC on the Basic Law can have a direct effect on local legislation. This, some may feel, is tantamount to interpreting local legislation.
- (b) In para. 6(2) of the paper, it is said that an NPCSC interpretation does not undo a court decision in favour of a particular party to the proceedings. However, this is misleading if it implies that people who would have benefited as a result of the CFA

judgments on 29 January 1999 will not be affected by the NPCSC interpretation given on 26 June 1999. As a matter of fact, the position of the Government is that those right of abode claimants not considered litigants in the proceedings decided in those judgments might be adversely affected by the NPCSC interpretation.

I look forward to your early response.

Yours sincerely,

(Hon Margaret NG)
Chairman
Panel on Administration of Justice and Legal Services