

LCQ6: Civil servants of the HKSAR Government

Following is a question by the Hon Wu Chi-wai and a reply by the Secretary for the Civil Service, Mr Patrick Nip, in the Legislative Council today (June 24):

Question:

It has been reported that the Secretary for the Civil Service has recently stated that under the "one country, two systems", civil servants employed by the Hong Kong Special Administrative Region (HKSAR) Government are civil servants of the State at the same time. Nevertheless, both the Basic Law and the Civil Service Code of HKSAR do not contain similar statements. In this connection, will the Government inform this Council:

(1) of the legal basis for the aforesaid statement; whether there are official documents which corroborate such a statement;

(2) as the relevant articles in the Law of the People's Republic of China on Civil Servants (the PRC Law on Civil Servants) provide that the civil servant system shall be under the leadership of the Communist Party of China and the guidance of the Thoughts and Theories of certain incumbent and former topmost leaders, and that civil servants shall support the socialist system, whether civil servants of HKSAR are required to comply with these articles; if so, whether civil servants of HKSAR will be subject to disciplinary actions for not complying with these articles; and

(3) whether it has plans to incorporate into the Civil Service Code of HKSAR the various requirements for civil servants of the State as provided in the PRC Law on Civil Servants; if so, of the details?

Reply:

President,

Article 1 of the Basic Law stipulates that "[t]he Hong Kong Special Administrative Region is an inalienable part of the People's Republic of China". Article 12 of the Basic Law provides that "[t]he Hong Kong Special Administrative Region shall be a local administrative region of the People's Republic of China, which shall enjoy a high degree of autonomy and come directly under the Central People's Government".

President Xi Jinping, in his address delivered at the Inaugural Ceremony of the Fifth Term Government of the Hong Kong Special Administrative Region on July 1, 2017, mentioned that "[a]s a special administrative region directly under the Central Government, Hong Kong has been re-integrated into China's national governance system since the very day of its return. The Central Government exercises jurisdiction over Hong Kong in accordance with

China's Constitution and the Basic Law of the Hong Kong Special Administrative Region, and the corresponding systems and institutions have been set up for the special administrative region". Article 2 of the Basic Law stipulates that "[t]he National People's Congress authorizes the Hong Kong Special Administrative Region to exercise a high degree of autonomy and enjoy executive, legislative and independent judicial power, including that of final adjudication, in accordance with the provisions of this Law". Article 5 of the Basic Law also stipulates that the socialist system and policies shall not be practised in the Hong Kong Special Administrative Region. Therefore, under the principle of "One Country, Two Systems", the Hong Kong Special Administrative Region (HKSAR) is part of China, while practising systems (including the civil service system) different from those of the Mainland.

Under Article 45 of the Basic Law, the Chief Executive shall be appointed by the Central People's Government, and Article 43 of the Basic Law provides that the Chief Executive shall be accountable to the Central People's Government and the HKSAR in accordance with the provisions of the Basic Law. Under Article 60 of the Basic Law, the head of the Government of the HKSAR shall be the Chief Executive; and under Article 99 of the Basic Law, civil servants of the HKSAR Government must be responsible to the Government of the HKSAR. The above Articles clearly demonstrate the link of civil servants of the HKSAR Government, through the HKSAR Government and its head (i.e. the Chief Executive), to the Central People's Government, under the constitutional order. Therefore, civil servants of the Government of the HKSAR are not only civil servants of the Government of the HKSAR, but also civil servants of the Government of the Hong Kong Special Administrative Region of the People's Republic of China.

The full name of the "Hong Kong Special Administrative Region" is the "Hong Kong Special Administrative Region of the People's Republic of China", and "civil servants of the Government of the Hong Kong Special Administrative Region" means the same as "civil servants of the Government of the Hong Kong Special Administrative Region of the People's Republic of China".

According to the Civil Service Code, civil servants shall serve the Chief Executive and the Government of the day with total loyalty and to the best of their ability. Also, civil servants, being a key component of the public service, have a constitutional role to give their best in serving the Chief Executive and the Government of the day. Under "One Country, Two Systems", when considering and handling policy matters and issues, civil servants of the HKSAR Government should not confine themselves only to the perspective from the HKSAR. They should deliver their work in accordance with the Basic Law, and the laws and systems of Hong Kong, while at the same time they should also take into consideration the perspective that Hong Kong is part of the country, so as to enable the discharge of their duties in a comprehensive and thorough manner.

As mentioned above, under the principle of "One Country, Two Systems", the HKSAR practises systems different from those of the Mainland, including the civil service system. Article 103 of the Basic Law stipulates that "[t]he

appointment and promotion of public servants shall be on the basis of their qualifications, experience and ability. Hong Kong's previous system of recruitment, employment, assessment, discipline, training and management for the public service, including special bodies for their appointment, pay and conditions of service, shall be maintained, except for any provisions for privileged treatment of foreign nationals". The Law of the People's Republic of China on Civil Servants (PRC Law on Civil Servants) does not apply to the civil servants of the HKSAR Government. In fact, Annex III of the Basic Law, which lists out the national laws to be applied in the HKSAR, does not include the PRC Law on Civil Servants. As such, there is no need to incorporate into the Civil Service Code of the HKSAR Government the requirements for Mainland civil servants as provided in the PRC Law.

Thank you, President.